

Written in Invisible Ink: A Case Study on the Politics of Free Trade Reform and Labor Regulation in Guatemala

By

Seth Pipkin

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Brown University
Providence, RI (2002)

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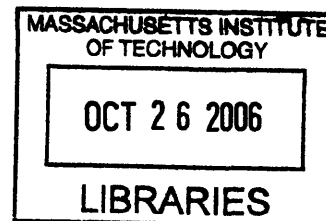
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Author [Signature] Department of Urban Studies and Planning
Date: 5-24-06

Certified by [Signature] Professor Judith Tandler
Department of Urban Studies and Planning
Thesis Supervisor

Accepted by [Signature] Professor Langley Keyes
Chair, MCP Committee
Department of Urban Studies and Planning

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ABSTRACT

This thesis makes two primary claims: first, that the US – Dominican Republic – Central America Free Trade Agreement (US-DR CAFTA, or CAFTA) has had important effects on labor regulation in Guatemala that are not contained in the explicit agreement text. These effects are referred to in the title as “invisible ink” because they constitute changes to labor law and regulation that would not have occurred without a trade deal on the table, but are nowhere mentioned in the text of the treaty. The second claim of this thesis is that the causes and meanings of invisible ink can only begin to be understood after a thorough consideration of domestic political and institutional history in countries undertaking the reforms that are the invisible ink. Based on five months of field work interviewing key actors in Guatemala and the United States, three examples are presented to illustrate these points: the first two are similar unionization efforts in Guatemalan apparel export manufacturers wherein the difference between success and failure meant tapping into the Guatemalan government’s need to present itself to critics abroad, particularly in United States, as ready and competent to participate in the CAFTA. The third is a case of rule reform in the Guatemalan Ministry of Labor that shows how informal pressure using CAFTA as leverage resulted in the creation and expansion of a specially-trained and successful commission of Inspectors. These Inspectors have in turn used CAFTA as a source of legitimacy in expanding their roles and reaching out to other actors in the private sector and civil society to reduce labor conflict and improve conditions for workers. The implication of these cases is that more opportunities exist for labor-friendly market reform if actors are willing to think beyond the formal rules contained within trade agreements.

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Title: Professor of Political Economy

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Chapter 1: Introduction

1.1 CAFTA's invisible effects on labor regulation in Guatemala

The United States-Dominican Republic Central America Free Trade Agreement¹ (US-DR CAFTA, or CAFTA) was passed by the United States Congress on July 27, 2005 by the narrowest of margins, with a vote count of 217-215. Rules had to be bent even to reach this conclusion – house votes, normally limited to 15 minutes, were extended in this case to over an hour to maximize last-minute coaxing of Representatives by their party leaders (Andrews 2005). The level of controversy in some ways exceeded the stakes – a market that absorbed about \$17 billion of U.S. exports, or about the equivalent of New Jersey's yearly global exports (ibid). Nevertheless, the treaty took on great symbolic value as a trial of sorts for the entire free trade agenda in the United States. Even more broadly, free-trade commentators used this treaty as another case to examine one of the classic sticking points regarding trade in general: whether such agreements, particularly those between countries with disparate levels of development, can encourage new investment on any basis other than the pursuit of cheap, marginalized labor.

Meanwhile, during the period of political debate that led to the United States' strained approval of the agreement, changes in methods of labor law enforcement were occurring within Guatemala's national institutions that themselves received no explicit mention in the agreement's text, but which were entirely dependent upon the CAFTA for their initiation. The Guatemalan government, as a result of feeling pressured to prove that it could uphold its obligations as a CAFTA partner, intervened in a case of unionization in an unprecedented fashion by unilaterally

¹ Countries included in Central America were Guatemala, Honduras, El Salvador, Nicaragua, and Costa Rica. One reason the agreement is often referred to merely as "CAFTA" is because the Dominican Republic entered into membership significantly later in the process than the Central American countries – whereas an agreement was first proposed in 2001, the Dominican Republic did not enter as a negotiating partner until 2004 (USTR 2004).

forcing the local management of a garment manufacturing company to agree to negotiate with a union whose members' rights it had violated. Making this even more noteworthy, the factory was a foreign-owned apparel company, a type of firm that had, in Guatemala especially, previously posed nearly insurmountable challenges to labor organizing. Simultaneously, the Guatemalan Labor Ministry, responding to many of the same pressures, experimented with a new way to train, organize and empower its Inspectors, establishing a special sub-set of the Inspectorate whose practices continue to be further institutionalized and disseminated. Both of these changes were inextricably linked with the presence of the CAFTA as a source of political leverage on the Guatemalan government, but neither figured prominently into debates in the United States over the labor-related effects of the agreement. Nor would the changes be indicated by any reading of the formal text of the CAFTA. Thus, while the debate raged over the meaning and implications of the agreement in the U.S., this same agreement sparked relevant changes in Guatemala that never informed the conversation.

This thesis will make two primary claims: first, that the CAFTA has had important effects on labor regulation in Guatemala that are not contained in the explicit agreement text. These effects are referred to in the title as the “invisible ink” of a free trade agreement (FTA), because they constitute changes to labor law and regulation that would not have occurred without a trade deal on the table, but are nowhere mentioned in the text of the treaty. “Changes to labor law and regulation” in this sense can include actual legal reform, as well as changes in the implementation or enforcement of laws, either through single acts or repeated behavior of the enforcing or implementing agent. The cases described in this thesis cover all but actual changes to laws, though a discussion of history will show how Guatemala has also in the past made legal

reforms as a way of improving its standing in trade relationships without these reforms ever being mandated by the trade agreement or even explicitly demanded by the trading partner.

The second claim of this thesis is that the causes and meanings of invisible ink can only begin to be understood after a thorough consideration of domestic political and institutional history in countries undertaking the reforms that are the invisible ink. This requires analysis extending into intra-institutional history to see how the reformers' internal priorities, external political environment, and learning histories affect their actions in the reform process. Because this process is one in which perceived political imperatives are filtered through reforming and implementing institutions with their own historical experiences, there is no reason to believe *a priori* that invisible ink will be assured to act in the favor of workers. However, in the cases described in this thesis, they did. Therefore, for those interested in realistic policy solutions for how to channel free trade to the benefit of workers, an understanding and analysis of how trade agreements' invisible ink is generated – and how it generated positive results in cases such as these – can become a useful tool.

1.2 Invisible to whom? Expanding the view on free trade.

1.2.1: Different takes on CAFTA's provisions

Nearly all public discussion about the labor effects of CAFTA centered on its chapter on labor, Chapter XVI, as well as the agreement's dispute settlement mechanisms, which are the subject of Chapter XX. In Chapter XVI, the agreement requires all member parties to “strive to ensure” that all ILO core labor standards are followed,² as well as “effectively enforce” all

² Since 1995, the ILO has generally promulgated eight of its conventions as “fundamental” or “core” labor standards: Freedom of Association and Protection of the Right to Organize (Convention No. 87), Right to Organize and Collective Bargaining (No. 98), Forced Labour (No. 29), Abolition of Forced Labour (No. 105), Discrimination (No. 111), Equal Remuneration (No. 100), Minimum Age (No. 138), and Worst Forms of Child Labour (No. 182)

domestic labor laws (Bolle 2005 p.2). If a member party decides that another member is not meeting these criteria, CAFTA stipulates a multi-tier process by which government consultations, ministerial committees, and arbitral panels of independent experts are all steps toward an ultimate maximum sanction of \$15 million per year until the offending government resolves the violation (Devlin et al. 2005). No substitute action can compensate other than the resolution of the original violation for which the offending country was cited (USTR 2005).

Two very familiar schools of opinion formed around the agreement: first, those who saw its ability to stimulate private sector growth as outweighing any disadvantages from job displacement insufficient labor standards in any of the participating countries. This is the classic view that less restrictions on trade will increase trade volume in a variety of sectors such that the net economic growth of the trading community is enhanced; any casualties, such as relocation of American workers' jobs to Central America, or the forced movement of Guatemalan farmers from the rural to the urban economy, will have its own compensating effects, leading to a "convergence" among the trading economies (cf. Sachs and Warner 1995). Prominent advocates of this view included the Bush Administration itself and the Cato Institute, among others.³ Those who fall along these lines tended to also agree that the sanctioning mechanisms as laid out in Chapters XVI and XX would effectively address any chronic unwillingness of any of the

(ILO 2000). These standards are usually assigned four categories: Right to Organize, Forced Labor, Discrimination, and Child Labor. The CAFTA demands adherence to all ILO core standards except discrimination; this is a vestigial effect of US trade conditionality as it was originally designed in the General System of Preferences, at a time before the ILO had settled on its definition of "core standards."

³ The Cato Institute's soundbite-length version of the trade-labor/environmental standards story is as follows: "Nations open to trade tend to grow faster and achieve higher incomes, and higher incomes promote higher labor and environmental standards. Higher incomes allow more private and public spending on pollution control and create demand for higher labor standards from an expanding middle class. By promoting trade, development, and higher incomes, a free-trade agreement with Central America and the Dominican Republic would in reality help to build the capacity of those countries to maintain and raise their domestic standards." (Griswold and Ikenson 2004) This particular explanation less explicitly addresses the reciprocity of the trade and justifies the CAFTA for the Central American countries simply on the basis of their own assumed growth; nevertheless, the two stories fit together and are at least implicit in the logic of most CAFTA supporters.

CAFTA partners to follow the principles of the agreement as related to its requirements to maintain an existing floor of labor standards.⁴

The second familiar argument, that against liberalized trade's ability to improve conditions for workers in trading partners, was asserted vociferously by organized labor and human rights groups in the United States. In an informational piece on CAFTA Chapter XVI, the AFL-CIO criticized it on the grounds of not requiring any legal reform to national labor laws that, according to them, should be considered deficient by most Americans, and that the dispute settlement mechanism of Chapter XX carried insufficient power to pressure member countries to better enforce their labor laws (AFL-CIO 2003). Harley Shaiken, an academic well-known for his support of organized labor, articulated the labor-based critique of CAFTA on broader grounds, saying that the inadequateness of the regulatory aspects of the trade agreement would not only fail to properly sanction misbehavior, but would encourage investment that would fail to stimulate region-wide growth and economic convergence – in effect, accusing the agreement of exemplifying mercantilist capitalism, without actually ever invoking the term. In Shaiken's words, the overall effect of CAFTA's regulatory scheme would lead to "firms willing to travel the low road...defin[ing] competitiveness, cutting off those who want to do the right thing" (Shaiken 2005).

1.2.2: Labor's lament: CAFTA versus its predecessors

a. GSP and the Peace Accords

Labor rights advocates cited two major problems with CAFTA in relation to its policy antecedents: first, that it would permanently replace the US General System of Preferences

⁴ Technically, the agreement stipulates multiple floors, those being each participating country's standards – an important point to some critics, who noted that Chapter XVI does not specifically seek to prevent members from lowering their labor standards in any way other than to maintain the minimum required to maintain the ILO core standards. Without this specificity, critics argued, a CAFTA member could theoretically roll back its labor laws in other aspects without violating the agreement.

(GSP), which involved a formal petition process whereby beneficiary countries' benefits could be unilaterally revoked on the basis of labor violations. By not building such a robust petition process into CAFTA, the agreement appeared to some to lower the bar in terms of pressure for improving labor conditions. Moreover, as will be discussed further below, political activists and labor groups both in Guatemala and the United States had successfully brought about Guatemalan labor reform via GSP petitions, meaning that many labor advocates saw the potential changeover to CAFTA as implying the loss of their only *effective* tool for instigating pro-labor reforms in Guatemala. Secondly, those of the more regulation-focused school on free trade saw CAFTA as a step back from other free trade agreements in terms of the level of standards demanded (described further in section *b* below). Regarding the first issue, that of the GSP, further background is necessary both to explain the CAFTA critics' perspective and to highlight the importance of the historical experiences of reforming institutions in understanding how trade agreements come to accumulate invisible ink.

The GSP is a system by which the United States provides duty-free trade access to developing countries provided they meet certain economic and political criteria. In the case of Guatemala, its entry into GSP status began in 1983, as one of the 27 Central American and Caribbean countries included in the Caribbean Basin Economic Recovery Act (Dypsky 2002 p.102). The GSP contains a petition process by which certain individual national exports or the overall GSP status of a beneficiary country can be withheld for compliance failures. On the issue of labor, a compliance failure is defined only as failing to "take steps" to enforce basic labor standards as defined in the Trade and Tariff Act of 1984.⁵ These failures can be petitioned by businesses, NGOs, or unions, and they are processed entirely under the authority of the United States Trade Representative (USTR). Petitions are processed by the USTR on a yearly basis, and

⁵ See footnote 2 above.

it has the authority to first accept or deny the initial request for review; if it chooses to review a petition, it thereupon may decide whether the country under review is “taking steps” to address the violation, and if not, whether to suspend GSP rights altogether or to extend the review for another year (Elliott and Freeman 2003 Appendix C, Frundt 1998 pp.65-67).

In Guatemala, the GSP experience brought together such groups as the US/Guatemala Labor Education Project (US/GLEP, later US/LEAP), the AFL-CIO, and most of the major Guatemalan trade federations of the time. Petitions were filed by these groups acting in various combinations together from 1986 on through 2004. These petitions cited specific violations in a variety of sectors, from bananas to coffee to garment manufacturing, and did over time result in several successful changes, including the pressuring of Guatemalan President Jorge Serrano away from committing a coup d’etat in 1993, as well as reforms to the Guatemalan labor code in 1992 and 2001 (CALDH/ILRF 2004 p.45, Frundt 1998 Chs. 7-8, Herrera 2005 p.33). In fact, in the garment manufacturing sector, the sector upon which this thesis’ cases are centered, one case of GSP-based pressure did result in unionization – in a contractor to Philips Van Heusen, known as *Camisas Modernas*. In this case, after struggling for over three years to obtain governmental recognition of a union, a GSP petition in 1992 finally helped provide the impetus necessary for the Ministry to recognize the union, the first to be recognized in this sector in six years (Armbruster-Sandoval 1999 p.117). Only after five more years of worker organizing efforts did this case result in a collective bargaining agreement, with the company’s shutdown following just one year later (ibid. p.124).

This particular case, with its drawn-out chronology and quick disappearance, is emblematic of the general pattern of gains made under the GSP regime and organizing in Guatemala’s maquiladora sector (sectoral characteristics will be discussed further in section

1.3.4): normally, the Guatemalan government would hold out on reform for as long as possible until major retaliation from the United States seemed imminent. This reflected a slowly ingrained pattern of behavior, both on the part of pro-business Guatemalan elites and labor advocates in Guatemala and the United States. On the elite side, those facing criticism learned to stall as long as possible when faced with international sanction.

Similar behavior was also reflected in the context of the Guatemalan Peace Accords and their implementation, which was facilitated by a coalition of foreign governments and multilateral organizations known as the “Group of Friends”; the Group of Friends attached significant economic benefits to Guatemala’s full implementation of its Peace Accords, with the United Nations Verification Mission in Guatemala (MINUGUA) as the agent charged with establishing compliance status. Government leaders stalled on Peace Treaty reforms such as the expansion of the federal tax base, calling for multiple reschedulings of the timetables dictated by the Treaties, all the while demonstrating “best faith efforts,” or, in other words, a commitment to “taking steps” toward the agreed-upon goal. Nearly every time, the international community allowed the “taking steps” approach to satisfy their demands, which oftentimes led to such stalling that compliance with the Peace Accords turned into an ongoing, seemingly interminable effort (Jonas 2000 p.175). Likewise, in the case of GSP, whenever pro-business members of government have perceived laxity on the part of carrot-and-stick-holding international entities, they have resisted or even rolled back any and all pro-labor reforms – thus, for example, we see that the GSP-won labor reforms of 2001 were largely repealed in 2004 (Herrera 2005).

The lesson was not lost on the labor advocates who fought under the GSP for almost twenty years. Because nearly every complaint made under the mechanisms of Guatemala’s international commitments took several years, if not closer to a decade, to reach any form of

concrete compliance, advocates learned that the GSP system, if it was to work at all, required extreme persistence and repetitive protest. Between the slowness of the United States Trade Representative to respond to complaints, and the efforts of members of the Guatemalan government to pass through the scrutiny with minimal reform, these international, trade/aid-based monitoring schemes encouraged a “hail mary”-type approach on the part of advocacy groups, in which as many unions and human rights groups on the US and Guatemalan side as could be amassed would all adopt an issue as if it were their own to keep the ball from rolling back. As inefficient as this might sound, it nevertheless had produced results: therefore, the potential removal of this mechanism represented a grave matter to these organizations.

b. Previous US bilateral trade agreements

Beyond dissatisfaction with CAFTA’s preemption of the GSP petitioning mechanism, CAFTA critics also cited the agreement’s labor chapter as inferior to other recent US trade agreements in its stringency and/or inappropriate to the trading partners in question. The previous free trade agreements signed by the United States that had provisions for labor were the North American Free Trade Agreement (NAFTA) with Mexico and Canada, and individual, separate agreements with Jordan, Chile, Singapore, Australia, and Morocco. Of these, Jordan was considered the most robust in its formal terms, having integrated labor standards into the text of the agreement along with sanctions for failing to meet the agreement’s in-text standards, as opposed to reserving sanctions only for the failure to enforce of a country’s domestic labor laws. Instead of this model, the CAFTA text hewed closer to that adopted in the Chile and Singapore bilateral agreements, where sanctions apply to national laws but not the core standards written into the text (Bolle 2005 p.2). Thus, many claimed that what worked for Chile and Singapore could not work for the Central American countries, which were poorer and perceived to have

weaker domestic institutions for the enforcement of labor law (AFL-CIO 2003). While styles of implementation could theoretically make sanctioning enforcement under the Chile-Singapore model as effective as under the Jordan model,⁶ the complaint of regulation advocates is understandable: by allowing greater national sovereignty in the creation and definition of adequate labor standards, CAFTA's approach gave more trust to each national government, and assumed that supra-national standards for labor were less of a priority than in the Jordan case.

1.2.3 Beyond formal agreement rules: making broader assessments of free trade

Regardless of the potential consequences of differing approaches to enforcement within the same rule regime, debates in the United States concentrated on what the formal structure of CAFTA provided. Those who wanted a better CAFTA debated the validity of its labor provisions both as a replacement to the GSP rule structure, and as a rule system that would apply experience from previous free trade agreements in a manner relevant to the parties involved in the current particular case. As a result, the groups most interested in such opportunities for improvement were at least in their public discourse overlooking the potential of the negotiation process itself to serve as a springboard for regulatory change in Central America. Another result is a popular view of free trade agreements as having impacts on labor conditions only via their enacted texts, not through the alternate political discourses and shifts they inspire by affecting the attentions and vulnerabilities of a wide variety of actors.

The academic trade and labor discussion is well-established enough to also contain a great deal of research that focuses more on these political processes. Work in this vein includes

⁶ Labor laws in Guatemala and the other Central American countries, while not necessarily the most rigorous on every conceivable issue, are nevertheless fairly comprehensive and cover every standard stipulated in the text of the US-Jordan FTA. Therefore, if one is very strictly supervising how a country such as Guatemala enforces its extensive labor code, there exists ample opportunity for improving enforcement via sanctioning; likewise, without vigilance and active enforcement, a Jordan model can allow for labor repression as bad as or worse than that found in Central America. Only recently, a new report on labor conditions in Jordan has revealed mistreatment of immigrant workers equal to or in excess of violations observed in Central America and China, both in terms of severity and in the proportion of firms who violate (Greenhouse and Barbaro 2006).

several pieces each by Kimberly Ann Elliott and Richard Freeman, including a co-authored book that attempts to be comprehensive on the topic, entitled *Can Labor Standards Improve Under Globalization?* (2003)⁷, an examination by Victoria Murillo and Andrew Schrank of causes of increased labor regulation in Latin American countries during periods of neoliberal reform (Murillo and Schrank 2005), and a case study by Regina Abrami involving Cambodia's Bilateral Textile Trade Agreement with the United States (Abrami 2003). These studies, while very different in their scope and methodology, are all attempts to see how ongoing political processes shape labor outcomes in the context of trade agreements and market liberalization.

Each of these studies takes a more evolutionary view of the political and regulatory effects of international trade treaties, and in their own ways contain pieces echoed by the arguments made here. Elliott and Freeman, in approaching the question of the long-term effects of trade on labor conditions, turn to aggregating data on petitions filed under the United States' General System of Preferences to suspend trade preferences on the basis of labor violations. Their findings show the success of a petition is affected by several preceding factors in the country against which the petition is raised. These include whether a human rights organization was one of the petition filers (a positive influence based on their sample, Elliott and Freeman 2003 p.75), as well as the level of enforcement of civil liberties in the country. Furthermore, although one might expect the petition process to be molded in the shape of US foreign policy as determined by a sitting President, the Clinton Administration USTR rejected about the same percentage of GSP labor-related petitions as the Bush I Administration, with the Reagan Administration USTR agreeing to review a much higher percentage of petitions than Bush I or Clinton. In this sense, this work suggests a great deal of space for endogenous factors within the country under petition to explain the results of the petitioning process.

⁷ Particularly relevant to the argument of this paper is Chapter 4, "Labor Standards and Trade Agreements."

Murillo and Schrank's study of pro-labor regulatory reform in Latin America during a period known for free market economic reforms considers how two diverging historical paths in the region have both caused seemingly ideologically contradictory reforms due to the ongoing power struggles in which the free trade agenda arrives. These two paths, characterized either by powerful labor-backed political parties or government-repressed, overseas-civil-society-supported labor unions, each resulted in situations where national institutions made space for increased protections for organized labor within a broader legislative agenda of market liberalization. Even more specifically related to the subject of this thesis is their observation that sometimes institutional actors within national governments can undertake "preemptive" labor reforms when faced with the prospect of losing eligibility for preferential trade (Murillo and Schrank 2005 p.982).

Abrami focuses on the how the Cambodia-U.S. Bilateral Textile Trade Agreement represented an opportunity for Cambodia to rebuild its institutions in a labor-friendly way after being ravaged by civil war. Even after the agreement passed, finalization of a scheme for the enforcement of labor standards (and thereby the verification of Cambodia's compliance with the terms of the agreement) was highly uncertain. U.S.-based labor groups fought to have their government repeatedly raise the bar and withhold incentives for Cambodia until the Cambodian government engaged in new regulatory schemes it could not have foreseen at the initial drafting of the agreement.⁸ The result was for civil society groups to mobilize around the new piece of legislation and find room within its implementation to alter its institutional effects, resulting in the rapid growth of new labor federations and a much higher adoption rate among Cambodian

⁸ Although the agreement itself was reportedly vague on the exact institutional framework that would be needed to monitor labor standards (Abrami 2003 p.10), the pressure from foreign civil society groups resulted in a much more complex and drawn-out implementation of the agreement's promised incentives (increased quota allowances for Cambodian-manufactured apparel exports to the U.S.), thereby raising the stakes for Cambodia in participating in the development of a satisfactory monitoring mechanism.

garment manufacturers of a “safe sourcing” (i.e. high-labor standards) approach as their competitive advantage of choice (as opposed to strictly cost).

Furthermore, the case of Cambodia reveals the broad scope within which these changes can come into play, insofar as the Cambodian government had to re-tool its approach to the labor monitoring mechanisms in the years after the enactment of its Bilateral Agreement with the United States, given that U.S.-based labor groups consistently pushed the United States government to withhold the agreement’s full incentives and push the Cambodian government to stretch farther in living up to its part of the deal (Abrami 2003). Likewise, similar stretching of the extra-textual effects of CAFTA can be seen in Guatemala at the time of this writing, where ambiguities over the meanings of intellectual property and other provisions in the agreement are forcing debates in the Guatemalan federal ministries, as well as the legislative and judiciary branches, as to whether the agreement should be implemented, and if and how the Guatemalan government should respond to demands of the United States to prove that it is fully “CAFTA-ready” (Dardón and Hernández 2006).

In each of these cases, one observes important common traits: first, the instrumentality of liberal trade reforms as a source of political impetus for a distinct change in institutional behavior or regulatory regime to occur. Second, that these changes, while based on pressures that carried with them certain ideologies and concrete change proposals, ultimately filtered their way through a set of domestic institutions that placed an imprint of specific local history and innovation on the reforms, as opposed to their content being dictated purely by any externally imposed template. In this way, these reforms that are being brought about by springboarding off the political opportunities created by trade agreements are best analyzed by starting from the perspective of local institutions and their histories. Without such an approach, it will not be

apparent local reforming institutions act on the externally-imposed imperatives via logics that differ significantly from the original debate that produced the external pressures.⁹ These traits will all be analyzed in further depth in the presentation of the two cases already mentioned above. First, before the more detailed exposition of these institutional stories, an overview of the national conditions in Guatemala will be necessary.

1.3 Why Guatemala? Why maquiladoras?

1.3.1 Guatemala's labor-repressive history

One of the first reasons why CAFTA's particular model of labor regulation so dissatisfied its critics was that the historical attitude of the Guatemalan government toward labor had been extremely harsh, marked by repeated events of state-initiated repression and violence against those who would exercise their right to organize. This often brutal history made the question of the impact of a free trade agreement on labor in Guatemala especially sensitive, and raised the legitimate questions of a) whether Guatemala, as a state, was ready to break from its historical repression of labor and b) whether, given this history in Guatemala, the United States was ready to make good on its promise to use trade as a tool to improve the wellbeing of workers worldwide.

Labor rights in the modern sense as promulgated by groups such as the ILO did not figure significantly in Guatemalan law until 1944, with the election of Juan Arévalo as President. Before this time, forced labor was legal and there were minimal protections for organized labor (Goldston 1989 p.7). This labor-friendly period lasted until 1954, during which began an era of military dictatorships that went almost unbroken until 1986. During this era of military rule,

⁹ This is not to say that foreign actors and their ideologies should not figure importantly in such an analysis; merely that, in the end, the perspectives and efforts of these outside groups will need to be considered primarily insofar as they affect the internal workings and decisions of institutions in the country where pressure is being directed.

repression of labor rights stood as the norm, a practice that perhaps reached its peak in the late 1970s-early 1980s, wherein an entire generation of labor activists was assassinated, disappeared, or pressured into exile (Jonas 2000 p.24, Frundt 1987, Goldston 1989 pp.8-9). This wiping out of labor activists across the country, enacted by the military as a part of its strategy to eliminate political opposition that might give lie to its claim as the sole source of democratic leadership in the face of a Communist insurgency, created a vacuum that has yet to be fully filled. Many members and advocates of Guatemalan organized labor interviewed during field research in 2005 and 2006 observed that the labor movement has yet to develop a corps of professional, educated, and motivated labor leaders as had existed before the military's concerted efforts at the height of the Civil War. This serves as an important backdrop for understanding the significance of any gains made for labor in Guatemala today.

1.3.2 Social and political antecedents of a maquiladora (apparel export) program

Today, Guatemala is a country of approximately thirteen million people, representing one-third of the population of Central America (SIECA 2004).¹⁰ National GDP is just a slightly lower proportion in the region at 30.8% of a regional annual GDP of approximately \$80 billion (World Bank 2005). Support for expansion into the apparel export sector grew out of the history of urbanization in Guatemala, which is based largely in trends set during the civil war. These involved the pushing of the indigenous population into migration out of the country's highlands and towards the capital with the growth in sugar and cotton farming beginning in the 1960s and the military's scorched-earth policy in the largely indigenous-populated highlands in the 1980s (Jonas 2000 and Painter 1989).

¹⁰ In this context, Central America includes Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica, and Panama.

With the influx into the capital city – Guatemala’s only large urban area – of a poor indigenous population, and a period of severe economic depression in the 1980s,¹¹ the political pressure to create employment for low-skill workers found an outlet in a maquiladora policy (AVANCSO 1994). Support for the promotion of apparel manufacturers as a way to buoy employment came from the same pro-modernization currents that brought non-traditional agricultural exports, of which cotton and sugar are prime examples, to prominence in Guatemalan economic growth in the 1960s and 1970s. In essence, the non-traditional exporters were an offshoot group of the classic landholding elite of Guatemala, represented historically by the Coordinating Committee of Agricultural, Commercial, Industrial, and Finance Associations (CACIF, as its acronym is used in Spanish).

In 1982, the proponents of non-traditional exports formed AGEXPRONT. At its founding, AGEXPRONT was structured as a group of parallel, industry-based commissions, one of which was for apparel and textiles. This commission is known as VESTEX. Politically, VESTEX and AGEXPRONT tend to share the belief with many members of CACIF that the owners of capital in Guatemala are the primary, if not sole source of growth in the country, and therefore any attempt to redistribute the wealth they hold to other groups in society is only a hindrance upon the goose that lays the golden egg (Jonas 2000 p.175). The main difference between the non-traditional exporting groups and the older agricultural elite is their greater tendency to prefer pro-modernization policies, which can also include government’s investments in human capital, as well the redistribution of economic surplus away from older agrarian products toward newer industries.¹²

The economic and sociopolitical environment of the 1980s described above facilitated the

¹¹ From 1980 to 1985 alone, half of the economic growth of the prior thirty years was wiped away (Painter 1989 p.20)

¹² Interview with US Embassy Labor Attaché, January 31 2006

ascent of the non-traditional exporters. Based on their effective participation in the national debates over how to overcome the economic quagmire of the 1980s, as well as the nearby example of rapid expansion seen in Mexico's maquiladora program in the 1980s, the Guatemalan government tried to introduce financial incentives for the growth of this industry incrementally throughout the decade. These efforts culminated in the 1989 Congressional law known as *Decreto 29-89*, which established a framework intended to mirror the Mexican model for offshore manufacturing, also known there as the *maquiladora* (maquila) program. The concept of a maquila program involves some package of tax incentives, usually centered around the elimination of tariffs on imports and exports, to encourage multinational corporations to locate assembly facilities in the host nation. In Decreto 29-89, these incentives included permanent tariff forgiveness on the importation of supplies for maquiladora manufacturers' products, permanent tariff forgiveness on the exportation of assembled products, ten years of rent tax forgiveness for manufacturing facilities, and ten years of excise tax forgiveness on certain basic supplies such as wood and gasoline. (ibid p.24, Cuadro 1, pp.48-49)

1.3.3 Growth of the maquiladora sector over time

Decreto 29-89 and other subsequent modifications helped to generate a dynamic maquiladora sector in Guatemala, one that grew from almost nothing to make important contributions to employment and foreign currency on a national level (see tables below). Although the law did not circumscribe designation as a maquiladora to the apparel sector, industry-specific incentives written into the United States' Caribbean Basin Economic Recovery Act and its later updates made sure that nearly all investment in offshore manufacturing in Guatemala took place in this sector. As a result, in Guatemala, saying the word "maquiladora" is equivalent to "apparel export." In 1984, before official statistics were kept on the sector, outside

reports counted only six apparel export factories employing a total of 2,000 people and exporting \$6 million worth of goods (Petersen 1992). Historically, the United States has been almost the sole market for this sector's exports, and it was the destination for 94% of Guatemalan maquila production in 2004. In confirmation of the maquila strategy as one of urban employment, 87% of maquiladoras are within or just on the outskirts of Guatemala City (VESTEX 2004).

Table 1: Growth of the Guatemalan Maquiladora Sector in Employment and Value of Exports

Year	# Workers Employed	Value of Exports
1984 ^a	2,000	\$6 million
1995	54,000	\$586.9 million
2000	93,300	\$1.4 billion
2004	113,200	\$1.9 billion

a: Source: Petersen 1992

remainder of table: Source: VESTEX 1995, 2004

Table 2: Guatemala's growth in share of garments imported by the U.S.

Year:	1983	1986	1990	1992	1994	1995	1996	1997	1998	1999
Share:	.04%	0.11%	0.8%	1.6%	1.8%	1.9%	2.1%	2.1%	2.3%	2.3%

Source: Paz 2002

Table 3: Number of workers employed in selected production categories, Guatemala

Apparel/textile firms (2004)¹³	All industry (2003)	All agriculture (2003)	All formal sector¹⁴ (2003)	All Guatemala (2003)
146,500	460,773	1,421,814	1,495,000	3,403,942

Sources: VESTEX 2005, PNUD 2004

Table 4: Export values, 2003

	Apparel	Top Five Primary Products¹⁵	Total National Exports
Value (US \$)	\$1.44 billion	\$973 million	\$5.4 billion

Source: PNUD 2004

1.3.4 Maquiladoras as regulatory challenge and symbol of free trade risks

Despite the employment and foreign currency generated by the maquila sector, it has nevertheless become the focus of some of Guatemala's most heated debates regarding the place of its national labor force in global trade and production networks. Due to the generally low-technology, manual labor-intense nature of garment production itself, firms in the maquiladora sector are usually created established by foreign investors as a result of a search for cheap, low-skilled labor, and as such, they represent a case of acute difficulty for effective national labor regulation. The problems governments have reining in these labor-marginalizing production practices are compounded by the fact that investment capital in garment manufacturing is more mobile than in most other sectors; hence, most governments in countries with clothing sectors

¹³ This includes all apparel manufacturers, textile manufacturers, and apparel service/accessory firms (e.g. laundry, printing, buttons/zippers) affiliated with the national garment and textile exporters' association, VESTEX.

¹⁴ The definition of formal sector here is all firms with more than five employees

¹⁵ Coffee (\$299 million), bananas (\$209 million), sugar (\$212 million), petroleum (\$173 million), and cardamom (\$78.9 million)

fear that they will scare away investment if they enforce their labor laws too avidly, essentially throwing the baby out with the bath water (ILO 2000).

Another factor complicating government regulation of apparel-sector companies involves these firms' frequent use of proprietary systems of labor standards enforcement, systems that in and of themselves are often thought to undermine the legitimacy of regulation from local government (Bartley 2005). Under these private compliance systems, which are now very common for well-known clothing brands, buyers make their purchasing from suppliers contingent upon compliance with a workplace code of conduct, whose standards may or may not be precisely in line with national labor law. These codes of conduct are usually enforced by either third-party auditors (often from large, private firms such as Ernst and Young) or by in-house staff in a process that generally takes place independently of the government's own labor inspections. In many cases, the magnitude of the stakes with the buyer (often multimillion-dollar contracts) can so far exceed the normal sanctioning power of the state as to result in the eclipse of public by private enforcement.

Finally, part of the sector's controversy in Guatemala turns on the prominence of Korean investment. In 2004, 145 of 222, or 65% of VESTEX members were Korean-owned, while 60 firms were Guatemalan-owned and only 13 US-owned (VESTEX 2004).¹⁶ The high proportion of Korean-vs.-U.S. investment in the sector is particularly interesting, given that its development has been so closely tied with U.S. trade benefits that are often contingent upon the use of primary materials from the U.S. Nevertheless, in the context of the Multi-Fiber Agreement, which limited

¹⁶ This does not mean, however, that VESTEX is a Korean-led organization. Nearly all maquiladoras in Guatemala are members of VESTEX, because VESTEX historically has been the managing office for Guatemala's quota limits for U.S. exports. As such, the data collected by VESTEX is generally considered the most authoritative available on the sector. Nevertheless, all interviewees from VESTEX have confirmed the fact that Korean firms have had to be VESTEX members to export to the U.S. means that most are members in name only, without actively participating in the organization. Thus, the original description of VESTEX in this thesis as a political actor largely along the lines of the wider group of Guatemalan non-traditional exporters still stands.

apparel imports to the U.S. from Korea and other countries that developed rapidly in apparel beginning in the 1960s, it becomes clear why Korean firms set up operations elsewhere. This does not, however, answer the question of why Guatemala. In general in Central America, U.S.-based investment in maquiladoras is more prominent. At least a portion of the answer to this lies in the fact that in the late 1970s and early 1980s, Guatemala actually distanced itself from the United States after the Vietnam-weary superpower demurred at Guatemala's request for renewed military support. This led to Guatemala's rejection of all foreign aid from the United States for a time due to President Carter's attempt to place human rights conditionality on the assistance; as an alternative, the government's military regime turned to countries such as Israel, Argentina, and South Korea (Jonas 2000 p.120, Petersen 1992).

A significant portion of South Korea's assistance to Guatemala came in the building of industrial parks that could accommodate apparel manufacturing, and the Korean presence in the sector was thereby established. As this initial rift between Guatemala and the United States has healed over time, the question of the desirability of Korean investment among Guatemalan politicians has become more and more ambiguous: ultimately, with the end of the quota system that was the Koreans' initial incentive to move production to Guatemala, the question may answer itself without any hard decisions on the Guatemalan government's part. In terms of the consequences for labor of this specific aspect of the sector's history, field interviews among many firm owners, buyers, and employees of both VESTEX and the Ministry of Labor revealed that the Korean presence overall presented a learning challenge on the intra-firm level in terms of communications between management and workers, as well as the development of human resources systems that were appropriate to the workforce. In this sense, the Korean element provided Guatemalan politicians with somewhat greater incentive than usual to experiment with

the rules they placed on foreign investors. The United Fruit Company maquiladoras are not: furthermore, clamping down on Korean firms would most likely not threaten Guatemala's status in programs or treaties such as GSP or CAFTA. If anything, it might enhance its status if such enforcement were applied properly as a display of compliance with GSP or CAFTA principles. The tension to maintain foreign investment remains, of course, and as Chapter 2 illustrates, it has always been extremely difficult to push actors in the Guatemalan government to risk a perception among foreign investors of all nationalities as anything but extremely investor-friendly.

1.4 Outline of case material

The goal of the presentation of the two following cases is to provide enough detail and context to show how an in-depth analysis of the continuing institutional histories within developing countries can affect assessments of their ability to implement free trade agreements in ways that benefit workers; that even in some of the most adverse conditions, there exist opportunities, and that a greater recognition of these opportunities might contribute to their being more effectively seized upon in the future.

Chapter 2 compares two cases of union organizing, both in Korean-owned maquiladoras, and both of which took place during the period in which CAFTA appeared and became an issue of political controversy. The unions that organized in both cases were part of the same Guatemalan labor federation cooperating with the same American unions and human rights organizations. One of these companies, known as NB, had an absolute majority of its workforce sign on as members, while the other, known as Choishin/Cimatextiles, normally fluctuated at under 20%, often even around 10%. Nevertheless, it was the latter that signed a collective bargain and continues to operate to this day. Chapter 2 will establish first *how* this firm

established a collective bargain with management, which involved using foreign sources of leverage to finally pressure the Guatemalan government to take unprecedented action and actually shut down the company until it agreed to negotiate with workers. In this case, the government's need to have good standing as a member of the CAFTA negotiations clearly affected the choices of such actors as the Guatemalan Ministers of Labor and of the Economy. These governmental pressures received heightened priority when the local management of this company tried to break the union with physical violence, which further pushed the labor/human rights coalition to cast the issue as a failure in the rule of law. In contrast, in the NB case, management initially was forthcoming in apparent willingness to resolve the issue with the union, leading to a labor strategy of pressuring for a collective bargain more in the sphere of private investors than with the government. Because local management hoped to end the union's support among workers by casting its efforts toward a collective bargain as hurting the firm's competitiveness, the labor strategy led to the slow, one-by-one exit of buyers from the firm until its eventual shutdown. The CAFTA-based political leverage used in the Choishin/Cimatextiles was not utilized to its potential, and an opportunity for improvements for workers was missed.

In Chapter 3, the same CAFTA-based pressures that led to a collective bargain for the 1,300 of Choishin/Cimatextiles are shown to have contributed to a reform in the structure of the Guatemalan Labor Inspectorate, namely, the designation of a special commission of Inspectors dedicated solely to the maquiladora sector. This special commission was created by the Minister of Labor in response to a variety of pressures on Guatemala to demonstrate its ability to maintain a rule of law. Across the tenures of two Presidential and Ministry Administrations of widely diverging ideological stripes, this commission expanded from one member in 2002 to ten in 2005. The overarching political constant across these two very different administrations (the

transition between the two occurred in 2004) was clearly CAFTA, which, as the facts of the Choishin/Cimatextiles case described in Chapter 2 in particular show, forced members of the Guatemalan government to take concrete actions to prove that it would not fail to do its part to protect labor. Beyond reinforcing Chapter 2's illustration of the power of the CAFTA as an opportunity for labor-friendly reform in Guatemala, the case of the Maquiladora Inspectors Commission shows how these internally-generated solutions to trade-based political problems can expand and take on dynamics of their own. Since its creation, this commission of Inspectors has developed a distinct approach to labor code enforcement that it is further disseminating by creating new partnerships that bring non-governmental organizations, unions, and maquila employers and their associations together.

After Chapter 3, a brief conclusion will review the argument of the thesis in light of the empirical evidence presented.

Chapter 2: The state reveals itself

Leveraging CAFTA's higher stakes for the Guatemalan government leads to results

2.1 The organizing process of Choishin/Cimatextiles

Choishin/Cimatextiles (Choi/Cima) comprises a complex of two factory buildings first established by the Korean apparel manufacturing firm Choishin in 1989 on the outskirts of Guatemala City. The factory was initially founded solely as Choishin, but once the standard ten-year tax breaks associated with firms designated as maquiladoras by the Guatemalan government were set to expire, the company established its Cimatextiles facility as a separate corporate entity housed within a second building on the same campus. The parent company then designated the Choishin operation as a subcontractor to Cimatextiles (VESTEX 2005), completing a pattern that is similar across firms in the sector.¹⁷ For this reason, the two corporate entities, Choishin and Cimatextiles, are referred to in this document as one firm, given that they exist together in a complex and share the same management, ownership, and buyers. Collectively, Choi/Cima employs approximately 1300 workers, making it a relatively large-sized firm in the sector;¹⁸ as of 2004, 70% of its production was for Liz Claiborne International (LCI), for whom it had already been producing for six years.¹⁹ Of the three suppliers to LCI in Guatemala, it produces the most sophisticated and high-value-added garments, which are mostly mid-to-high-end women's wear items made in relatively short production runs of 5,000-50,000 pieces.²⁰

The process of organizing a union in Choi/Cima began in 1999 when the AFL-CIO Solidarity Center of Guatemala²¹ and the International Textile, Garment and Leather Workers'

¹⁷ Interview with VESTEX employee, July 7, 2005

¹⁸ Interview with Pinsiri Fernando, July 8, 2005

¹⁹ Correspondence with Sarah Connolly, April 16 2006; Interview with Pinsiri Fernando, July 8, 2005

²⁰ Interview with Pinsiri Fernando, July 8, 2006

²¹ AFL-CIO Solidarity Centers are a network of approximately 34 offices around the world. They are organized and staffed by the AFL-CIO, and in 2004 operated on a worldwide budget of \$31.7 million, \$29.4 million of which was

Federation (ITGWLF)²² collaborated with a local Guatemalan labor organization known as the Labor Federation for Food and Agro-Industrial Workers (FESTRAS, an acronym based on the Spanish version of this title) and determined that this firm would be a desirable choice for an organizing effort.²³ The organizations based their decision on their understanding of the factory's high level of dependency upon a buyer that had established a history of responding to the demands of labor advocates (Connolly 2004 p.52).²⁴ In the next stage, FESTRAS, with the assistance of its American partner organizations, met with and recruited workers in the factories as they gradually and clandestinely built support among employees in order to minimize the potential for reprisal from management.²⁵

On July 9, 2001, SITRACHOI and SITRACIMA, one union each for Choishin and Cimatextiles, announced themselves as worker organizations seeking legal status via submission

provided by the U.S. federal government (American Center for International Labor Solidarity 2005). The network was established in 1997 primarily as an alternative to the American Institute for Free Labor Development (AIFLD), which had over time gained a reputation as a tool of American anti-Communist foreign policy which had in many instances been documented as lending support to oppressive government regimes in developing countries. The end of the Cold War and the election of former Service Employees International Union (SEIU) Director John Sweeney as head of the AFL-CIO, produced enough political will to reform the Federation's approach to cross-border organizing efforts (Rodberg 2001). As such, most of the Solidarity Centers' current efforts focus largely on technical assistance (e.g. recruitment and organizing strategy) to local unions in developing countries (AFL-CIO 2005).

²² The ITGLWF comprises 216 trade unions in 106 countries with global membership totaling over ten million (ITGLWF 2006).

²³ Although FESTRAS' name indicates that it might not concentrate on apparel manufacturers, its organizing director notes that previous experiences in organizing around international buyers (especially Coca-Cola) made it specially equipped for organizing in maquiladoras (Interview with David Morales, January 19, 2005). Given the general scheme of working relationships between the Solidarity Centers and their local partners, it appears likely that the AFL and any other American supporting organizations (such as the ITGWLF and USLEAP) used their staff resources to combine their broader knowledge of foreign firms with local unions' knowledge of suppliers to arrive at a decision of the best candidate for a local campaign.

²⁴ Liz Claiborne International is considered a pioneer in the "factoryless" model of American clothing brands, in which the entire role of the American company leaves the actual assembly part of the value chain to other firms and concentrates on design, marketing, and store placement. As a result of this extended history, the company was one of the first to experience pressure from civil society groups to improve working conditions in its suppliers, as well as one of the most responsive, given the centrality of this type of production to its business model. (Elliott and Freeman 2001, Gereffi 1999 p.47)

²⁵ Interview with anonymous, July 8 2005

of union papers to the Guatemalan Ministry of Labor.²⁶ Management responded swiftly to the announcement. In fact, on the day of the paper submissions itself, the national maquiladora association, VESTEX, assisted management by having legal representatives visit the union workers and propose a non-union *solidarismo*²⁷ solution to their grievances (COVERCO 2001 p.3). By July 18, factory management had fomented the development of another group of workers who claimed to be authentic representatives of the factory employees' interests (ibid. p.5).²⁸ On July 24, the Ministry of Labor recognized SITRACHOI and SITRACIMA as valid union entities. By this time, management had fired at least seven union-affiliated workers (ibid. p.4), which would be illegal if union allegations were correct that the workers' labor affiliation was in fact the motivation for their dismissal.

As early as July 19, the situation reached a chaotic peak with violence in the workplace and management's refusal of responsibility to guarantee security. Although many who were there described the scene as pandemonium with violence on all sides, it appears that a great deal of the aggression came from the management-supported worker group, as many as 50 of whom at a time were wandering the factory campus intimidating and beating people, with union members as their primary targets (ibid. p.4). Although FESTRAS' international partners had

²⁶ Following from the previous explanation of Choishin and Cimatextiles' identity as one firm, SITRACHOI and SITRACIMA will be referred to together without distinction; however, the empirical reality is that there are two separate legal entities at both the firm and union level. While it is possible that the necessity of two firm-level union organizations, each with its own leaders, might have created a gap between the two groups, between the author's own interviews and other documentations of the case, the two unions do not seem to have drifted from each other in any significant way.

²⁷ *Solidarismo* refers to a type of worker-employer cooperative organization frequently found in Central American firms. Under this scheme, employees pay a fee for membership in a usually religiously-affiliated organization that provides benefits such as loans, subsidized credit, and housing. By agreeing to become members of the *solidarismo* organization, workers must also abrogate their rights to create a union. Furthermore, the *solidarismo* organization itself is not empowered to participate in collective bargaining agreements (Goldston 1989 pp.139-146, Catholic New Times 1996).

²⁸ There is no indication that VESTEX had anything to do with the founding of the rival worker group, a type of group that some in Guatemala call a *grupo de choque*, which one might translate to "counter group." VESTEX is only known to have helped management put together a proposal for the *solidarismo* union alternative, which is not the same as the *grupo de choque* that local management apparently formed on its own.

been generating a consumer pressure campaign against LCI all along, the heightened severity of the situation motivated the buyer to action. By July 25, LCI's buyer representative stepped in and insisted that management respect workers' right to organize, communicating via letters and on-site meetings with the firm's managers. At about the same time, the Ministry of Labor called together factory management and the unions to clarify the rights of the workers, as well as to demand that the factory take responsibility for security on its premises and reinstate all workers fired for their union affiliations (ibid p.5). This negotiation led to a relative stabilization of the unions' status, though collective bargaining did not take place because the unions had not recruited the minimum 25% of the total factory workforce as stipulated by Guatemalan law for such procedures (Rodriguez-Garavito 2005 p.223). In August, after a follow-up meeting convened by the Ministry of Labor, management explained its plan to ensure the rights of its unionized employees, and an agreement consenting to this plan was signed (COVERCO 2001 p.6). This agreement, which only stipulated that the management recognize the legitimacy of the union's existence and the legal rights of its individual members, established the status of labor relations for the factory for nearly the next two years.

2.2 Organizing hits a wall

This solidification, however, probably did not take the form that FESTRAS and its international partners had anticipated based on their research. Given the virulent response to unionization by management, workers understandably did not join in large numbers; union size remained small, and as a result, management had only to follow its August 2001 agreement to recognize the union's existence while it maintained its legal right to refuse to come to the table to

establish a collective bargain with the workers. What ensued was a situation described by union members, leaders and third-party observers with terms such as “silent terror,” or a “climate of fear,” wherein the precedent of a strong hand employed by management, despite promises made to the Labor Ministry and Liz Claiborne International to refrain from such activity in the future, acted as sufficient threat so as to preclude progress in labor relations. This combined with management’s probably intentional pushing at the edge of legality in its treatment of union workers (discussed below) made sure that the union stayed marginal.

Sometime early in 2002, the union members became frustrated enough with their predicament to end their official relationship with FESTRAS. Although it has been difficult to find information on the precise reasons for this split, it appears that the lack of progress combined with certain elements of FESTRAS’ structure and leadership to result in workers feeling alienated from the federation. Some plausible reasons include FESTRAS’ lack of history in the maquiladora sector, as well as its deep integration with international labor advocates such as the AFL-CIO and the US Labor Education in the America Project (US/LEAP, formerly US/GLEP), who may at times have given workers the impression that FESTRAS was not an “authentically” Guatemalan group (Connolly 2004 p.61).²⁹

SITRACHOI and SITRACIMA distanced themselves from FESTRAS most likely until the summer of 2003. Research did not uncover any reference to their having joined or considered joining any other labor federation or confederation during this interim period. Left to their own devices, they sent complaint after complaint to the Ministry of Labor based on the quietly hostile attitude of management. Complaints found in the Ministry of Labor’s records reflect a situation in which the margins of legal enforceability were reached, and clarify why a passive “climate of

²⁹ Also taken from interview with Sarah Connolly, April 10, 2005; Interview with Homero Fuentes, January 20, 2006

fear” in the context of a history of violent intimidation was enough to prevent workers in the union from making progress in meeting their goals.³⁰

By April of 2002, over 200 worker complaints against Choi/Cima management had been filed to the Inspectorate without reaching any resolution. At this point, the Ministry of Labor, via decree from the Minister, assigned one labor inspector to attend exclusively to the conflicts and complaints emanating from Choi/Cima.³¹ The Inspector General chose César Gatica, an inspector with extensive previous experience in tripartite remediation, to fill the position. Instead of all of the worker complaints moving through a rotation of various inspectors, the Minister and Inspector General intended for Gatica to provide more dedicated attention to help to prevent the conflict from festering and creating a continuing publicity problem for Guatemala vis-à-vis multilateral organizations and trading partners. This assignment and both its immediate results and its further effects will be discussed in depth in Chapter 3; however, in the sequence of the Choi/Cima organizing narrative, it is important to note that Gatica became an essential point of contact between the union and the Labor Ministry, and although he himself may not have fundamentally changed management’s attitudes within this period, his activities constituted the main progress in labor relations made in Choi/Cima during this time. This progress relied on

³⁰ Management and the union would frequently duel over very technical issues, such as the appropriateness of Christmas gifts for workers. Disputes over issues such as these gave LCI the impression that the union focused on trivial subjects (Interview with Pinsiri Fernando, July 8 2005). This in effect pushed the buyer away from its disposition to intervene in workplace issues, and left the union locked in a long series of conflicts with management without any strong advocate to make up for its lack of a collective pact. Worse, the union’s unprotected status combined with pressure from management created a sense that all workplace conflict was part of management’s broader strategy to destroy the union. Thus, any conflict between workers, or any disciplinary action taken against a union member, was perceived by union members as retribution for their affiliation, while the punishment itself could be plausibly justified by the company’s formal and legal rules system: for example, a fight might break out between two workers, one a union member. The story of the other worker would be that the union member offended him in some subtle way; the story of the union worker would be that management put this other worker up to instigating the fight so as to create legal grounds for the worker’s dismissal (e.g. Ministerio de Trabajo case 2335-2002). Based on standard mode of resolving labor cases in the Ministry, this potential sign of union repression could not be followed up on as such; instead, it was treated as an internal matter of factory discipline. In this way, the effectiveness of the Ministry of Labor in protecting workers was reduced as well.

³¹ Interview with César Gatica, January 13, 2006

Gatica's ability to consistently bring both parties together to the table to speak with each other and resolve workers' complaints. Furthermore, because his special assignment carried with it special powers, such as responsibility for all complaints against the firm, as well as a mandate to call meetings to resolve disputes with the right to levy fines if parties did not make what he deemed to be adequate efforts toward resolution, he was able to bring greater order and clarity to management-worker relations in the factory, as well as prepare the grounds for any potential future collective negotiations (Connolly 2004 p.59).³²

2.3 CAFTA as an opportune moment

Despite this useful intervention from a specially empowered labor inspector, the ability of the union to perform its basic functions as the representative of workers' interests was undermined by the lack of a collective pact, which management continually maintained the right to refuse because of SITRACHOI and SITRACIMA's low registration rates. This situation could potentially have been maintained indefinitely were it not for an unprecedented and perhaps unique confluence of external pressures, all motivated at least in part by the emergence of the CAFTA as a prominent political issue.

The process of meetings between the United States and Central American countries to discuss the possibility of a regional free trade agreement began in September 2001 when representatives of the United States, Guatemala, El Salvador, Honduras, Nicaragua, and Costa Rica met in Managua, Nicaragua to discuss the possibility of drafting and pursuing such an agreement. These activities were first publicly announced by United States President George W. Bush in January of 2002 (Office of the Press Secretary 2002). Administrative meetings and preliminary "agreements to commercial cooperation" preceded official negotiations of the

³² Also taken from interviews with César Gatica, January 13, 17, 31, 2006

treaty's text, which began at a summit in San Jose, Costa Rica on January 27, 2003, with plans to finalize the text by the end of that year (an agreement text was finalized on December 17) (United States Trade Representative 2006; United States Embassy, San Jose, Costa Rica 2006).

As public consciousness in the United States regarding trade with Central America grew during this period, so did efforts to build political consensus that this agreement was a socially acceptable path. These debates took place in all participating countries (as evidenced, for example, by Costa Rica's temporary withdrawal from the process during part of 2003). With all of Central America comprising a combined regional GDP amounting to 0.6% of that of the U.S. in 2003 (UNDP 2005), however, it was the United States whose domestic debates would have the greatest effect on other trading entities.

Pressures from the anti-CAFTA, mostly US-based human rights described in the introduction were compounded by domestic manufacturers for the US market who called for the rejection of CAFTA on the grounds of its potential to encourage further movement of manufacturing jobs offshore.³³ These forces combined to create an atmosphere of enough political doubt to bring into question whether the CAFTA process would make it from start to finish in the US Congress. Guatemala in particular appeared vulnerable because of its history of conflict and human rights violations mentioned above, resulting in the following commentary on the CAFTA negotiation process from the Economist in February of 2003:

“These [CAFTA] talks have foundered on national differences. Costa Rica has long been stable and relatively prosperous; it has been sniffy about sharing sovereignty with its neighbours. At the other extreme, Guatemala remains corrupt and backward. Last month, the United States bracketed it with Haiti as failing to fight drugs. According to the State Department, Guatemalan police ‘stole twice the quantity of drugs that they officially seized’ and were involved in drug-related murders. Guatemala's human-rights record has deteriorated under President Alfonso Portillo. A presidential election in December may be won by Efraín Ríos Montt, a former dictator and Mr.

³³ Business associations such as the U.S. Business and Industry Council and the National Textile Association, not to mention other sectoral groups such as American sugar producers (who stood in protest against CAFTA's elimination of sugar tariffs on the region), all spoke out fervently against CAFTA (e.g. USBIC 2006, NTA 2003)

Portillo's mentor. In that case, many Americans might oppose rewarding Guatemala with a trade agreement.”
(*Economist* 2003)

Of course, such characterizations are made of many developing countries, often with spurious connections between the empirical facts and the generalizations spun around them. In this case, however, perception was at least as important as what actually occurred on the ground, as it was the perception of the U.S. electorate and Congress that would ultimately decide Guatemala's participation in the trade agreement. Thus, whether the Guatemalan government was truly dysfunctional in its efforts to control narcotics trafficking, or even whether denunciations of failures to protect human rights in Guatemala were exaggerated, is immaterial in light of the simple fact that the Guatemalan government did not want to get left behind by CAFTA.

Concerns about labor rights and the maquiladora sector, therefore, formed but a part of the overall mix that threatened to exclude Guatemala from a significant opportunity for economic growth and trade preference parity with its regional competitors. Manufacturing and the maquiladora sector, in this sense, was an important microcosm in greater Guatemala's difficulty in reaching a stable regime for enforcement of law and conflict management that would lend it legitimacy in the eyes of the outside world. As a fast-growth, difficult-to-regulate³⁴ sector with strong ties to US-based multinational firms, Guatemalan maquiladoras received more international attention than firms from nearly any other sector in the country during the 1990s.

It was within this context that an investigative mission to Guatemala in April 2003 led by a high-ranking member of the United States Congress added pressure that helped Choi/Cima to take on a different dynamic. Representative Sander Levin of Michigan, the highest-ranking

³⁴ See Introduction sections 1.3.3 – 1.3.4.

Democrat on the House Ways and Means Committee,³⁵ led a mission of several members of the House of Representatives to Guatemala, El Salvador, and Nicaragua. The goal of this trip was to report back to Congress on the status of labor rights and working conditions as they pertained to the suitability of these countries as free trade partners. The trip, which included a special visit to the Choi/Cima facilities, resulted in a highly critical appraisal of CAFTA by Levin, who wrote a letter to his colleagues pointing out observed deficiencies in labor law enforcement. His assessment focused a great deal on the maquiladora sector in these countries, and the following extended quote from his letter conveys the scope of debate the conviction of his assessment:

“In recent years the major industrial growth in each of the three nations has been in the maquilas, assembling apparel in free trade zones. This remains the most foreseeable engine driving their economies in the years immediately ahead...

“In the garment maquilas, ...what is clearly the most salient to the conditions of these workers is the right to associate, organize and bargain collectively.

“Today, in each of these three countries, that right is not a reality. Indeed the opposite is true. The laws themselves are inadequate and do not embody the five core labor standards [of the ILO].³⁶ And, even where there are laws on the books, they are not well enforced and are often used against workers trying to organize...

“as far as we could determine, there is not a single effective collective bargaining agreement in any of the garment maquilas of the three countries though there are over 300,000 workers...

“As we begin to consider the specific provisions and merits of the Singapore and Chile FTA, we need to take into account that the current realities for worker rights in those two nations contrast with the persistent inability of workers in Central American [sic] to exercise any real ability to associate and bargain in order to achieve an effective role in their work place, an essential dynamic that is in need of change and must be addressed in CAFTA negotiations.” (Levin 2003)

Soon after, in June of 2003, the Guatemalan Minister of Labor, on a visit to the ILO in Geneva, received an international censure for Guatemala's failure to properly enforce collective bargaining rights as encoded both in domestic labor codes and by ILO Conventions that the country had ratified into the same status as national law (Connolly 2004 p.62). Suddenly, that

³⁵ Rep. Levin also considers free trade to be one of his main issues of competency as a legislator. While his district location in the suburbs immediately bordering Detroit on the North might suggest a tendency toward a harder protectionist stance, Levin, a former Assistant Administrator at USAID (Biographical Directory of the United States Congress), received only a mixed rating from the Cato Institute regarding his record on free trade, cited in 2003 as voting for trade barriers 55% of the time and subsidies 0% of the time between 2001 and 2002 (Griswold 2003).

³⁶In his citing of five core standards, Rep. Levin enumerates child labor, forced labor, non-discrimination, right to associate, and right to bargain collectively (Levin 2003).

same month, both the Minister of the Economy and the Minister of Labor threatened “drastic persecution” exclusively against Choi/Cima, citing a total of 37 labor law complaints against the firm between May and June alone. The Minister of the Economy threatened revocation of the companies’ export licenses, and the Minister of Labor forced a temporary closure of the firm. The Minister of the Economy, Patricia Ramírez, publicly stated that “We are conscious of the cost to the country of closing these companies, but we believe that the benefits will be greater in the medium- and long-term if they are made to comply with the law.”(Smith 2003. Translation is the author’s own.) At first, the unions did not know how to respond, and even expressed anger about the closure, presumably because they thought they were actually going to lose their jobs. However, once the Ministries elaborated that only the negotiation of a collective pact would lift the sanctions, the unions recognized the gift they had been given (USLEAP 2003).

On June 26, 2003, the management of Choi/Cima sat at the table with the firm’s two unions to negotiate a collective pact. The final bargain was written and agreed upon within three weeks of that time (Connolly 2004 p.63, Rodriguez-Garavito 2005 p.223). In December of that year, Guatemala’s status as a fully-fledged participant in CAFTA was confirmed by the ratification of a final treaty text by five participating countries (United States Trade Representative 2003).³⁷ While this ratification did not represent the irrevocable inclusion of Guatemala or any other country regarding the agreement, it was a sign that the United States was ready to move forward with them as partners.

In January of 2004, when Oscar Berger of the business-allied Grand National Alliance (GAN) party took office as President of Guatemala, he made the public gesture of sending his

³⁷ These five countries were the United States, Guatemala, El Salvador, Honduras, and Nicaragua. The treaty text was ratified by the trade representatives of the respective countries. The Dominican Republic was not added as a party to the agreement until March of 2004 (United States Trade Representative 2004). Although Costa Rica for a time backed out of participating in the agreement, it agreed to again become a regular participant in January of 2004 (United States Trade Representative 2004a)

new labor minister Jorge Gallardo Flores on a visit to Choi/Cima to verify that the recent labor peace achieved there was secure (Connolly 2004 p.72), seemingly confirming the firm's status as a symbol of Guatemala's progress in healing its reputation for maintenance of rule of law. As of January 2006, the unions have persisted and were in progress on renewing their collective pact with management.

2.4 NB: Same setting, same actors, less CAFTA, no collective bargain

Another case of union organization helps to illuminate how the insertion of the Choi/Cima conflict into a broader CAFTA debate appears crucial in the results that those efforts garnered. NB Guatemala (NB), a factory owned by the Korean apparel exporter Nobland, was established in 2000 (Nobland 2005). It maintained a workforce of approximately 350 workers, making it a small-medium maquila, and contracted for such brands as The Gap, Target, JC Penney, and Victoria's Secret (VESTEX 2005).

NB's unionization began in the Spring of 2003 when 30 workers started to organize on their own, without the assistance of any larger federation, confederation, or international group. Within a few months, the AFL-CIO Solidarity Center and FESTRAS caught wind of the effort and began providing technical support and staff assistance at NB in June of 2003 (Connolly 2004 p.66). By October, management became aware of the unionization effort and fired four union-affiliated workers, leading to an attempt at injunction to have these employees reinstated. By November, management assisted in the creation of an alternative workers' group in a fashion similar to the one created by the Choi/Cima management, although no violence is reported to have taken place as a result of this. One important difference from the Choi/Cima case is that the more worker-based origins of the organizing efforts seemed to garner broader union registration,

leading to a registration rate of over 50 percent of the factory workforce by this time (Connolly 2004 Chapter 3 Section 2).

By December, the firm's management recognized the clout of the union, and attempted to vindicate itself by requesting a third-party audit to prove its contentions that it was not violating labor laws. This resulted in local management contracting UN - Guatemala Mission on Human Rights (MINUGUA) researcher Ricardo Changala to perform a ten-day audit of the factory. In mid-January, Changala concluded that management had indeed obstructed workers' right to organize, and by January 20th, the union submitted a proposed collective pact (Connolly 2004 Ch. 3.2). Of note in this case is that this entire verification process took place completely independently of any government participation – it had been motivated by labor groups' and human rights activists' pressures on foreign buyers, Korean ownership, and local management. Furthermore, the report of Changala only related to how these three target groups would decide to move forward in their dealings with the local union.

Given local management's acquiescence and the union's quick proposal of a collective pact, this would have seemed to set the company on the path to a resolved labor conflict, given in particular the force of added worker power. However, it did not. Two possible reasons might help to explain why NB never enacted a collective pact and ceased operations in June of 2005. One is that no buyer emerged as willing to both push local management to comply while providing assurance that it would have steady enough orders to absorb whatever costs would be incurred by the stipulations of a collective pact. The Gap, normally very assertive in verifying, enforcing, and maintaining worker-friendly environments, might have been expected to act in such a manner as this case, but perhaps due to the company's small size and The Gap's short history and low purchasing commitment to the factory, it did not.

The second reason is that until at least January of 2004, this case had many trappings of success and seemed to be on track to be a case of Guatemala's labor laws and enforcement system functioning well. Although relations between management and workers were bumpy, there were no recorded violent outbreaks, and although the firm's management disagreed with the accusations placed against it, it voluntarily submitted itself to a third-party audit and did not overtly contest its results. The ultimate failure of this process came from a slow attrition against the union, one that eroded the workers' own support of its efforts, and therefore did not ever take on as clear-cut an appearance to the outside world as in the case of Choi/Cima.³⁸ In this sense, the NB case kept the unions and activists on a path of pursuing restitution mainly via the private channels that had seemingly put the case on the verge of bona fide success. As such, NB never became the litmus test for Guatemalan rule-of-law that Choi/Cima became.

The process of attrition involved buyers slowly disappearing, sapping worker support for the union by implying that the union's activities were garnering results detrimental to their job security. In NB, local management learned to set off triggers that would push the union away from the negotiating table; this meant standing firm on certain contentious clauses of the pact, choosing protocol that showed disrespect for the union (including not properly announcing meeting times), and in one instance, the resort of the company's head supervisor to slapping a female union member (*ibid.*). Over time, as the union and its international allies attempted to increase pressure on the company by appealing to buyers (foremost of which were The Gap, JC Penney, and Target, who ended their relations with the company in that order), management turned this around against the union by re-broadcasting (sometimes photocopying) the unions' communications (made in partnership with their transnational activist allies) of its intent to pressure buyers with the explanation that the union was intentionally trying to push the company

³⁸ Interview with Troy Fitrell, January 31, 2006; Interviews with César Gatica, January 13, 17, 31, 2006

out of business. Eventually, by mid-2005, over 70% of the workers in the factory signed and submitted a request to the Guatemalan Ministry of labor to unilaterally dissolve the union (ibid.). In June of 2005, having lost all of its work orders, the factory filed for bankruptcy and permanently ceased its operations (USLEAP 2005).³⁹

2.5 Accounting for success and failure, with implications

The argument of this chapter is that what separated Choi/Cima's apparently sustainable unionization success from NB's ultimate collapse was how the situating of each conflict within public- vs. private-based resolution mechanisms affected CAFTA's ability to bring greater attention and pressure to achieve a union-friendly resolution. There are, of course, several other reasons that some might point to as also generating the differing results. However, while some of these factors were important, none was either as important or crucial as how the choice of whether or not to cast the conflict as a governance issue brought in expanded attention via CAFTA.

Some alternative explanations might involve the difference in company size and buyers – that is, because Choi/Cima was an older, larger firm that had established long-term relations to a labor-sympathetic (or, perhaps more cynically, image-conscious) buyer, that the proper incentives were in place to push management out of its labor-repressing mode. Following this logic through, NB's failure would be attributable to the fact that it had no such long-term relationships. There was no known “strong” buyer in NB in the sense that LCI's purchasing of

³⁹ One important fact to note is that the loss of orders does not necessarily buttress the claims management made against the union; in factories such as NB, which are part of a global production network, orders are normally assigned by the company's central headquarters based on relationships that are established and maintained primarily between the buyer and representatives at these headquarters. Of course, the dynamic might have been quite complicated and would require research with NB headquarters in South Korea, which was not possible given the limitations of this research project.

70% of Choi/Cima's products gave it a strong hand vis-à-vis local management. Regarding this issue, USLEAP,⁴⁰ which had been involved with the NB unionization process since the summer of 2003, mentioned in several reports on NB's progress in 2005 that Target, JC Penney, and the Gap all applied pressure on management to negotiate with the union; by March of 2005, it appears that Target was the company's only remaining consistent buyer (USLEAP 2004-2005). In this sense, NB's relationships to its buyers may have created a collective action problem not faced by Choi/Cima.

Certainly, more information is needed as to exactly why the Gap and other buyers dropped out of the picture. However, it seems clear that management's strategy of stalling negotiations was one party bluffing in a war of attrition: the union, for its part, tried to hurt management by encouraging buyer boycotts of NB, and management held on, most likely in the hopes that eventually employee support for the union would bottom out and lead to the union's dissolution once workers became convinced that the union's efforts were having a directly detrimental effect on the company's livelihood. In the end, it seems that local management won a pyrrhic victory: workers eventually turned against the union, seemingly just in time for the company to fold for lack of interested buyers.⁴¹

But the question remains: if Liz Claiborne had been purchasing 70% of NB's production, would NB have resulted in a stable union? The Choi/Cima case itself seems to say no: even with

⁴⁰ USLEAP is the United States Labor Education in the Americas Project, a private nonprofit organization founded in 1987 by labor and human rights activists (USLEAP 2006)

⁴¹ One representative of a large buyer stated in an interview that the normal incentive pattern for Korean managers is for promotion from headquarters to be based upon success in their local firms (Interview with Edgar Jimeno, August 9 2005); while no public record of the future careers of these local managers could be obtained, it seems reasonable to infer that their inability to handle the union problem without destroying the local factory was at least not viewed by headquarters as an unqualified success.

LCI's very direct participation,⁴² Choi/Cima foundered for nearly two years. Choi/Cima had the same union federation, the same transnational support network, and the same government actors as NB. Choi/Cima had less worker support than NB, and its main advantage over NB, its buyer relationships, was not the ultimate cause of success. The only major factor remaining is the public characterization of the Choi/Cima case as a failure due to incompetence on the part of the Guatemalan government at a time when the United States was prepared to renege Guatemala's eligibility for perhaps the ultimate foreign policy carrot, a bilateral free trade agreement .

This is not to say that LCI's long-term involvement at NB as a strong buyer would not have reduced NB local management's ability to stall negotiations, scare buyers, and reduce worker support; indeed, had there been a buyer as loyal as LCI at NB, perhaps the union and its allies would have turned again to focus on Guatemala's precarious status as a CAFTA participant to force the government to again assume uncharacteristic behavior. However, through at least mid-2004, NB was considered by observers to be a successful organizing case, even more so than Choi/Cima (Connolly 2004). NB's management, in never having been as overt or authoritarian with the union as that of Choi/Cima, did not trigger an interpretation of the case overseas as indicating a lack of rule of law. The transnational activists themselves saw the proper outlet for pressure as NB's foreign buyers, and used that route to its very limit, which was the closure of the firm.

In this sense, the true difference between the Choi/Cima and NB cases might be that the emergence of the rule-of-law question in the former situation, combined with a high-profile trade agreement for which Guatemala needed to curry international favor to ensure its inclusion, forced the state to "reveal itself." In the past, the strategy of Guatemala's Ministry of Labor and

⁴² All participants in the process, from union members, to organizers, to third-party observers, cited LCI's local sourcing officers as having been extremely proactive in defending the right of the workers to organize and negotiate a collective pact.

other legislative implementing agencies was more to try to pay tribute to the rules without ever ruffling firm owners' feathers.⁴³ Thus, the Minister of the Economy readily admitted that there would be a cost to closing Choi/Cima, but remained convinced that the long-term benefits to Guatemala (interpreted here as eligibility for CAFTA) would add up to more than any likely loss in investor confidence. Without CAFTA, the Minister of the Economy would have been more likely to come to the same conclusion reached over the years by many of these Ministers, not just in Guatemala but in many foreign-investment-seeking countries and regions: that the costs of making an example out of a firm in fact *does* exceed the benefits.⁴⁴ In the comparison of Choi/Cima's persistence with government's defense of a union to NB's closure without, we see evidence to the contrary.

With the assertion that there is such a thing as a "CAFTA difference," there is the question of what this difference constitutes. Is inclusion in a free trade agreement with an overwhelmingly large and human rights-conscious trade partner what it takes to get a national government to assume its full assertive potential in properly enforcing national regulations? The case nature of this research doesn't lend itself to a clear answer, but intuition would say no, simply based on the fact that there is a large number of political situations in which the stakes could imaginably be as high as the CAFTA was for Guatemala. This narrows the matter to one of scale: what level do the stakes need to reach before a state lets go of status-quo permissiveness in order to reveal itself and unilaterally change a power equation among local actors? Judging from the information brought forth in this study, the answer is uncertain but would appear to

⁴³ Cf. introduction p. 15

⁴⁴ On a closely related topic, that of how governments choose to offer incentives to foreign or non-local investors, Tendler notes that a lack of information on governments' part means that "they do not know how hard they can push and where, without scaring the [outside investment] away." (Tendler 2000 p.36) Similarly, in the case of labor regulation, government actors are often uncertain at what point the stringency of their law enforcement will push investment elsewhere.

have a tinge of economics to it insofar as the Guatemalan government seemingly only stepped in once it perceived the loss in foreign investment from NOT authoritatively applying force to exceed that which would result from any signaling effect among private investors from the temporary closure of Choi/Cima.

A final important consideration to take from this is that the centrality of the government's most decisive action in the Choi/Cima story does not detract from the usefulness of the efforts of FESTRAS, AFL-CIO, USLEAP, ITGWLF, COVERCO, FLA, and the panoply of other acronymously-titled organizations, both domestic and foreign, who struggled to institute unions in these factories. If anything, it reinforces them: their efforts clearly put the Choi/Cima case on the map and made it a litmus test of the Guatemalan government's legitimacy. However, in considering the fate of NB, it is possible that these groups and their partners misunderstood the nature of their success in Choi/Cima.⁴⁵

A crucial lingering question involves how this litmus test process relates to structural effects in the construction or reformation of an institution: when and how do the invisible effects of a trade agreement change the ongoing behavior of the state in a persistent way? The next chapter, on reforms to the structure of the Labor Ministry, will attempt to shine some light on this issue.

⁴⁵ This should not be said without encouraging caution in considering the Choi/Cima process a model to be duplicated: as Homero Fuentes, a labor scholar and investigator for COVERCO has noted, to the extent that there are any successes in the labor sector in Guatemala, it is because they do not try to use previous cases to overdetermine such efforts. Any valuable lessons gleaned from previous efforts, therefore, must integrate knowledge of both what produced success in the past with what separates these past circumstances from current contingencies. (Interview with Homero Fuentes, January 20, 2006)

Chapter 3: A shift in law enforcement

CAFTA pressures reform in the Guatemalan Labor Ministry

3.1 structure and perceptions of the Guatemalan labor inspectorate

The Guatemalan federal agency for the enforcement of the national labor code is known as the Ministry of Labor and Social Welfare.⁴⁶ The title in itself reflects its general modeling on a French model of labor enforcement, in which one central agency is responsible for the promulgation of a unified labor code (Piore 2005). In the case of Guatemala, this labor code includes such elements as rules for contracts between individual workers and their employers, minimum wage, work hours, age requirements, workplace safety, government-required benefits (e.g. contributions to social security and year-end bonuses), and severance pay (Ministerio de Trabajo y Previsión Social, Código de Trabajo). The Ministry is structured with a high-level directorate at top that includes one Minister and three Vice-Ministers; below this, “support organizations” that include the National Salary Commission (which is responsible for setting the national minimum wage, though this can be overridden by Presidential Decree), any Tripartite Commissions chartered by Congress, and a Secretary General’s Office. On another organizational tier, carrying out the substantive functions of labor code enforcement, are three main wings of the Ministry: an Inspector General’s Office, an office for the Director General of Labor, an and office for the Director General of Social Welfare.

The Inspector General’s office carries out the bulk of direct government supervision of the workplace. As such, there are approximately 400 Inspectors nationwide under the Inspector General, with about 150 of these working in Guatemala City and its environs and the remainder operating out of regional branch offices, of which there are 25 offices in seven regions besides

⁴⁶ A rough translation: the original title of the bureaucracy is *Ministerio de Trabajo y Previsión Social*.

the capital.⁴⁷ The duties of the Inspector are comprehensive and involve enforcement of all aspects of the Labor Code (Ministerio de Trabajo y Previsión Social, 2001).

Inspections are rarely, if ever, undertaken at the Ministry's initiative⁴⁸. Rather, the Inspector General has two main enforcement wings, one for the investigation of complaints, and the other for conciliation of substantiated complaints. A complaint itself can take two forms: *de parte*, meaning a worker has stepped forward and made the complaint in his/her name (most likely because he/she anticipates something owed by the employer), and *de oficio*, meaning a worker has levied a complaint anonymously. These two types of complaints do not directly affect the obligations of an Inspector, but a *de oficio* complaint may or may not nullify the conciliation process, depending upon what is revealed in the actual inspection.⁴⁹ Once a complaint is levied, it is the Inspector's duty to visit the workplace and verify that the labor code is being properly followed. If there are violations found, the inspector will instruct the employer regarding what is expected to reach compliance and assign a certain period of time before a return visit. Upon the return visit, if the employer has not reached compliance, the Inspector is to bring case to a Labor Tribunal for adjudication. These Labor Tribunals are organs of the judiciary branch of government, and their involvement in the labor enforcement process has been the subject of some controversy in recent times.⁵⁰ It is up to the judge in the Labor Tribunal to decide a) if the Inspector correctly identified an instance of punishable noncompliance and, if so, b) what is the appropriate fine to be paid by the firm.

⁴⁷ Interview with Aníbal García June 8, 2005, Interview with Noe Yanes, June 9, 2005

⁴⁸ Interview with Noe Yanes, August 10, 2005

⁴⁹ Interview with Noe Yanes, June 9, 2005

⁵⁰ A 2001 legislative reform placed all enforcement authority within the Ministry, but this was struck down by the Constitutional Court in 2004. Currently, the system is back to using tribunals of a similar structure to the pre-reform period, and there is a tripartite commission currently meeting to try to make a recommendation as to the long-term structure that the country should adopt (Herrera 2005; Interview with Celeste Aida Ayala Marroquin, August 10 2005; Interview with Troy Fitrell, August 26 2005)

Data that would give an overarching perspective of the activities of the Inspectorate are hard to come by. What little data that could be obtained during field research from the Ministry regarding enforcement results of the Inspectorate are a moving target, with category titles for violations changing from year to year and categories listed within the same year whose substantive differences are not apparent to the outsider. Data provided by the ministry in many cases did not specify whether violations resulted in fines, nor the money value of the fines. With more time for a dedicated project on the Ministry of Labor alone, these hurdles might be surmountable; however, in the context of the research performed as the basis of this paper, certain issues regarding gaining perspective on the performance of the Ministry's Inspectors will have to remain unresolved.

Despite these obstacles, some general points merit mention: first and foremost, that the Labor Inspectorate is poorly regarded by most other groups in the country. Not one interviewee in the entirety of this paper's background research could think of a generally positive trait of the Inspectorate; on the contrary, frequently mentioned adjectives included unqualified, uneducated, under-capacitated, corrupt, ineffectual, easily duped, powerless, and lazy. Such comments came from human resources managers of factories, labor organizers, human rights advocates (both from Guatemala and abroad), labor lawyers, researchers, and representatives of the U.S. Embassy. Of course, each of these individuals varied in the precise characterization, and most would admit upon pursuit of the issue that perhaps some Inspectors were able to accomplish their organizational objectives at some times,⁵¹ but no interviewee who was not a Ministry employee ever assessed the overall performance of the Inspectorate as effective in enforcing the labor code, or even as exhibiting promise in approaching such effectiveness. The common element across all

⁵¹ Admittedly, most interviewees raised or accepted the idea as a hypothetical, without examples; perhaps the most oft-cited examples of inspector success during field research was the Choi/Cima case, though this may have been because of the specific topic focus and interviewee pool.

interviewees was dismissal, even disdain, either due to perceptions of a lack of absolute internal capacity, or due to a belief that the relative potential of the Inspectorate to protect workers' rights was insignificant in comparison to other mechanisms, such as private codes of conduct and/or civil society pressure.⁵²

This sentiment is echoed in the few publications that discuss Guatemalan labor inspectors. In 2004 the Guatemalan human rights NGO CALDH worked together with the International Labor Rights Fund to comprehensively review the performance of the Ministry. In this report, workers are described as viewing Inspectors with “distrust” because of common perceptions that they are “biased in favor of employers” (CALDH and International Labor Rights Fund 2004 p.5). Inspectors are characterized as poor mediators between workers and employers because they “tend to do nothing more than convene the hearing and close the session if the parties do not reach an agreement immediately” (ibid.), as often uneducated in basic laws regarding collective bargaining, and as unwilling to use their powers as delineated in the Labor Code to demand entry into companies against which complaints have been filed (ibid. p.18). Likewise, César Rodríguez-Garavito, in an examination of the Choi/Cima case, mentions the labor inspectorate only to cast the aspersion (one made commonly in many places) that some Inspectors participate “in a revolving door system whereby former labor inspectors are appointed as heads of human resources in apparel factories producing for export.” (Rodríguez-Garavito 2005) Even if the long list of accusations against inspectors does leave room for positives, it stands in these accounts as only negative space at best.

⁵² Interviewees who asserted the greater enforcement power of buyers included LCI's head representative in Guatemala, the US Embassy Labor Attaché, the compliance officer of the second-largest maquiladora in Guatemala, and several employees of VESTEX, the maquiladora employers' association. The most common reason provided is that the scale of sanctions from a buyer normally far exceed those of a labor law enforcement agency – in the case of Guatemala, buyer contracts are easily millions, if not tens of millions of dollars, while an average fine for a violation from the Labor Ministry usually runs from about \$300-\$1,000 USD. Of course, most buyers will rarely if ever cancel a contract based on one code violation, but the magnitude of difference still causes firms to pay more immediate attention to pleasing a buyer than the Labor Ministry.

The reality as it appeared during field research was that in any given enforcement situation, numerous constraints can potentially come into play that could result in a reduction of the effectiveness of an Inspector, and that the universally negative outside views of the Ministry were a product of this variety of potential constraints producing an unnecessarily harsh stereotype of the Inspector: an uneducated, lazy, perhaps cowardly bureaucrat, susceptible to bribes, out-of-touch with workers, and incapable of performing the job as it is defined. The individual negative anecdotes that circulate seem to have been fused together onto the archetype of the Inspector, thus obfuscating in the minds of many outsiders the possibility that some inspectors are well-qualified, uncorrupt, and in many instances, capable of carrying out their job as the rules delineate. In the case that follows, then, we will see how the same civil society pressures that pushed the government to its conspicuous display of power in the Choi/Cima conflict also motivated the Minister of Labor to begin a process of reform that represents a sustained change towards more effective labor enforcement, a change that has produced new opportunities of its own.

3.2 Designating a different kind of Inspector

By April of 2002, the Choishin/Cimatextiles labor dispute had stretched for nearly a year, with FESTRAS/AFL-CIO/ITGLWF/USLEAP and other labor and human rights groups⁵³ working to bring as much international attention as possible to the situation. The implications created by CAFTA on the further scrutiny that would be applied to the Labor Ministry may or

⁵³ The reason that these organization names enter into and exit the narrative so fluidly is that they are all part of a very wide network of support for Guatemalan organizations whose prominence in workers' efforts is itself a worthy subject for a master's thesis. The precise dynamics of which organization is performing exactly what supporting function at what exact time go beyond the scope of this thesis' fieldwork. It is worth mentioning, however, that these organizations tend to run small offices in Guatemala, or intermittently send representatives there, and consult amongst each other regarding how their human resources will be allocated; and that furthermore, their capacities may oscillate over time within a somewhat limited range, meaning that their names frequently appear and disappear across various organizing efforts.

may not have been clear as of yet, but even if President Bush's announcement of intent to pursue the Agreement in January of that year was not directly influential in any of the Ministry's short-term decisions at the time, the Choi/Cima-related events of 2001 were strong indicators that the case might be worth special consideration. What is more, responsibility for the failure to reach a collective bargain in this case was placed at the doorstep of the Labor Ministry, given that the Choi/Cima management invited greater emphasis on public law enforcement with its refusal to take responsibility for mob violence on its premises. In short, the reasons for a response from the Ministry of Labor were manifold, and much more clear and direct than many cases such as NB where problem resolution can remain in the realm of maintaining a private buyer's contract conditions and goodwill.

As a result, the Minister of Labor ordered the Inspector General to assign an Inspector to handle every worker complaint in the Choi/Cima case. The Inspector General selected César Gatica, an inspector who had already worked for several years in the inspectorate as a specialist in the area of mediation, to the task.⁵⁴ Because of this previous experience in mediation, he was thought to have special qualifications for the task of negotiating between management and the union to reach a speedier resolution. The Ministry Administration's perceived need for extra attention on the case could only have been enhanced by the union's specific complaints against previous inspectors for their inability to resolve these problems. At the time of his assignment, there was a buildup of over 200 complaints by the unions against the company.⁵⁵ Besides his role as the sole Inspector to attend to Choi/Cima complaints, Gatica would have the power to call

⁵⁴ Interview with César Gatica, January 17 2006

⁵⁵ Correspondence with Sarah Connolly, April 16 2006

meetings between the union and management, as well as to levy fines if he determined that either party was not making a good faith effort towards resolution.⁵⁶

Following this designation of special responsibilities, Gatica practiced a mode of conflict resolution with a different character than most efforts undertaken the General Inspectorate. The distinguishing traits of this mode may be attributed primarily to the fact that the Choi/Cima unions were not passing through a large rotation of Inspectors, where each subsequent complaint would be referred to a different Inspector. This change in itself removed the disadvantage of an Inspector taking each individual dispute as an isolated incident. This more common method, where Inspectors acted without a better context of repeated incidents of workplace conflict over time, increased the likelihood that any rotating Inspector would call the issue a matter of internal factory discipline, not national labor law.⁵⁷ At least some success must be attributed to Gatica personally, as well: he established a structure in which the unions and management met twice a week, whether or not any conflicts had emerged, simply to get both sides better accustomed to dialogue with each other. Some meetings would begin at 9AM and not adjourn until 11PM. Gatica has recounted that he went to the Choi/Cima campus nearly every day from April 11, 2002 until over a year and three months later, when in July 9, 2003 the Collective Pact was

⁵⁶ It is not certain when one compares Gatica's description of the fining power to the labor code's description of the powers of the Inspectorate whether these exact tools are or are not already encoded, or implied, in the labor code. If anything, probably the biggest overall change was the consolidation of all of the firm's complaints for one inspector, who then organized discussions between management and the unions not just on the basis of individual complaints, but on the whole scheme of resolving the "conflictiveness" of the workplace. In this context, whether Gatica's fining power itself was defined by different rules seems less important, given the change in context within which he was to evaluate whether fines were merited.

⁵⁷ Toward this point, consider the example of complaints to the Ministry regarding fights between workers mentioned in Section 2.2: in this case, without the overarching perspective of workers' repression over time across incidents involving different individuals, the fact that union members perceived these incidents as forming a pattern proving management's infringement of their rights would remain in the background, if it figured at all. Under the model developed by Gatica, twice-weekly meetings with or without new complaints filed meant that any such grievance would be addressed within a larger conversational scope designed to bring to the fore broader issues than the one individual fight between two employees that may be only the most recent manifestation of a longstanding trend.

signed.⁵⁸ Thus, through his role as the only Inspector to attend to a growing backlog of over 200 labor complaints, Gatica developed an approach to Choi/Cima that made him a regular fixture, a mediator of continuous dialogue that took place with or without immediate roots in a dispute.

3.3 Growth of the Maquiladora Inspectors Commission

Although mounting CAFTA pressures gave the Choi/Cima case the extra boost it needed to force the government's hand in demanding a stable collective pact, Gatica himself produced clear signs of success in a devoted, highly mediation-oriented approach to maquiladora organizing cases. He and his colleagues insist that the structure of a maquiladora requires certain special skills in order for bargaining to be properly navigated. Unlike firms from other sectors with whom the Guatemalan labor inspectors must deal, Gatica and other members of the Maquiladora Inspectors Commission⁵⁹ point out how the large, low-technology industrial structure of the firms necessitates a large but usually poorly educated body of employees who are not likely to have received civic education because of early dropout from school.⁶⁰ Furthermore, they note that working in an industrial sector where 2/3 of firms have Korean ownership (VESTEX 2005) vastly reduces the likelihood that firm management will be ready to participate fluidly in a Guatemalan system of labor law and regulation.⁶¹ The apparent result of these general characteristics of firm structure and production mode (and, as a consequence, workforce)

⁵⁸ Ibid; also from Interviews with César Gatica, January 13, 17, 31, 2006.

⁵⁹ During field research, a total of three of the ten Inspectors were available for interview, and two spoke directly about the issue of consequences of the pattern of factory and supply chain organization in the maquila sector for labor law enforcement.

⁶⁰ Interviews with César Gatica, January 2006; Interview with Jaime Díaz, January 31, 2006. The explicit elaboration that Guatemalan students often do not receive civic education (which includes teaching basic constitutional rights) until after the completion of the *1o básico* school level comes from an interview with CGTG organizer Victoriano Zacarias, January 31, 2006.

⁶¹ Interviews with César Gatica, January 2006; Interview with Jaime Díaz, January 31, 2006

is a high likelihood of a communications gap between parties, a gap not normally breachable by standard Ministry procedures.

The success of Gatica's empowerment and efforts, if not already clear to authorities earlier, was shown to be recognized by the Ministry in late 2003 when the Inspector General added four more inspectors alongside Gatica as specialists in the maquiladora sector (*Acuerdo Ministerial* #s 435-C-2003 and 526-2003, dated October 15 and December 10, 2003, respectively).⁶² While it seems certain that the rapid resolution of the collective pact had a great deal to do with the external pressures that built up during the summer of that year, it must also have been clear that Gatica's work made its own distinct contribution to the amelioration of the problem. Evidence to the latter point could be found in the fact that no outstanding complaints were remaining from the Choi/Cima unions at the end of 2003, and that as soon as it filed for official union status, NB's union, SITRANB, explicitly requested that Gatica oversee its case as he had for Choi/Cima.

The recruits for the positions on the MIC were other Inspectors from the Ministry with greater-than-average mediation experience,⁶³ and, like Gatica, they would be expected to follow through continuously on cases over lengthy periods of time if necessary. Although many maquiladora complaints would still be passed along to other inspectors, this particular group would attend to cases that did not appear to be easily resolvable in the short-term. Furthermore,

⁶² These charters established the group as an official entity within the Ministry with the title "Special Labor Inspector Unit for the Attendance to and Supervision of Compliance of Labor and Social Welfare Laws in Businesses Designated as Maquiladoras in the Clothing and Textile Manufacturing Industry." (The translation is the author's own.) The adapted title used in this paper is Maquiladora Inspectors Commission, abbreviated also to MIC.

⁶³ Regarding the source(s) of the previous mediation experience of these members, no systematic reason is known; however, once recruited into the group, these members did receive special training in mediation and greater-than-average professional development, discussed further below.

these specially-designated Inspectors would still be assigned to other non-maquila cases to follow up on complaints if need be.⁶⁴

This expansion was repeated in late 2004 when another Ministerial Declaration expanded the group from five to a total of ten and formally declared that these Inspectors would exclusively attend to maquiladora cases, which would now all be consolidated to this group. Observations made both in and out of the group show that its members are considered to generally be some of the most experienced and qualified members of the Inspectorate;⁶⁵ the average law school attainment is also higher than the normal four years, usually five among this group; and since the consolidation of the group, all members have received extra training in mediation, as well as professional development that involves more classes than most other inspectors will attend.⁶⁶ These classes may be offered by international agencies such as USAID and SIECA, or domestic groups such as the human rights NGO CALDH. The result has been the resolution of many disputes that remained insoluble in other venues such as courts, and in some cases, important gains for many workers: for example, after the closure of NB, the MIC was able to arbitrate between management and the union so as to raise management's initial offer of 20% the legally mandated severance pay to 100% - as a result, a total of 212,338 Quetzales, or approximately \$28,000, was distributed across 263 workers. This amounted to an average payment of just over \$100 per worker, or nearly a month of minimum wage salary on a 40-hour work week (Ministerio de Trabajo case 1492-2005). As a result of such accomplishments, the Commission has just begun to build a group reputation – of the interviewees from government,

⁶⁴ Interviews with César Gatica, January 2006

⁶⁵ This observation was made independently by various labor lawyers, activists, and VESTEX employees interviewed during field research.

⁶⁶ Interviews with César Gatica, Jaime Díaz, January 2006.

the private sector, and NGOs asked about this group, probably less than half knew of its existence, and those who did cited it as something they had only heard of recently.

3.4 The spillover spills over

In 2002, Juan Francisco Álfaro, then the Guatemalan Minister of Labor, initiated the Maquiladora Inspectors Commission with one Inspector, César Gatica in 2002. He made this decision in the face of a case with international negative publicity that was proving highly problematic and of potentially damaging capacity to a Ministry and a rules system that had already proved itself vulnerable to international pressure. Not only that, but the stakes and intensity of this international pressure were raised over the course of 2002 and 2003, and to the extent that this institutional mechanism proved to be an improvement over what had preceded it, the Ministry elected to expand its use of this tool twice more before the passage of CAFTA in the United States. In particular, this reform was attempted exclusively in a sector that was being held up abroad as a case in point of the perils and moral hazard inherent in engaging in a free trade regime with a country such as Guatemala. The trade preference contingency and international censure that came to a head in 2003 surely made the difficulty in labor relations in the maquiladora sector a headache felt in other parts of the government, if it hadn't already been perceived in an acute fashion already; public denunciations such as Sander Levin's made the message clear that foreign governments and investors expected change in the maquiladora sector as a prerequisite for access to participate more fully in global production and investment networks.

There is not a precise straight line from foreigners such as Sander Levin or AFL-CIO activists to the creation and expansion of a Maquila Inspectors' Commission in the Ministry of

Labor; none of these groups has been documented to have asked for a specific commission of specially-trained and dedicated labor inspectors to resolve the regulatory problems of these factories. Rather, these pressures, which emerged as a series of political and economic sanctions and inducements demanding a specific set of results, filtered their way through the Guatemalan federal government overall and within the Ministry itself. On the other hand, it was clearly not a purely internal domestic process that produced this particular institutional reform, even if one is skeptical about the extent to which outside pressure itself generated the creation of the Commission.

For example, one must consider that between the last two expansions of the Commission, there was a change in Presidential administrations involving a significant shift in ideology in the Executive Branch. Oscar Berger, a member of the Grand National Alliance, was inaugurated as President in January of 2004, and was known for his close ties to the business community; his predecessor, Alfonso Portillo, was a member of the Guatemalan Republican Front (FRG), a self-styled advocate of the “common man,” and faced steady conflict with the Guatemalan business community (Muñoz 2002). Berger’s Labor Minister, Jorge Gallardo Flores, is an outspoken advocate of labor flexibilization and the former Secretary General of the National Solidarity Party (PSN), a center-right Christian party now in alliance with Berger’s Grand National Alliance (GANA). The PSN was a highly private-property, small government-oriented party that found government regulation in general distasteful.⁶⁷

⁶⁷ In a PSN party statement from 2004, their explanation of the role of the government in the management of the national economy included the following: “Within society, government establishes a system of the division of labor which bases itself on the principle of the private ownership of the means of production. Until now, the system which has prevailed is based in decisions that are bureaucratic, arbitrary and casuistic via the functionaries of The State, which not only has failed in its functions but has caused great damage to the populace. The State must contribute to the economic and social development of the governed, doing so while avoiding the waste of public funds in activities that belong in the domain of private citizens.”(ASIES 2004 p.117, Translation is the author’s own.) That this political group attributed over-involvement in the management of the economy to a government that struggled to raise tax revenue from 8% to 12% of GDP from 1996 to 2000 (Jonas 2000 pp.169-180) is telling.

On the other hand, Portillo's Minister, Juan Francisco Alfaro, was a former labor organizer. As the original head of the Guatemalan labor confederation known as CUSG, Alfaro gained a reputation as one who could walk the line between diverging political ideologies for the sake of building labor's political power. This is demonstrated by the fact that during his tenure, the CUSG accepted the support of the AFL-CIO's anti-communist American Institute for Free Labor Development (AIFLD) and carried the endorsement of the military dictator Efraín Ríos Montt while also partnering with such groups as the far-left Guatemalan labor organization UNSITRAGUA, a union that is associated with Marxists while denying any formal affiliations (Goldston 1989 pp.20-23, Armbruster-Sandoval 1999 p.115). Alfaro was also involved in many GSP petition efforts from the mid-1980s through the 1990s, and had cited incompetence on the part of inspectors as one of the primary obstacles to unionization in Guatemala (Fruendt 1998 p.172)

Of course, differing opinions on flexibilization vs. unions may not necessarily dictate strong cleavages in approaches to labor code enforcement, but when one considers the labor-sympathetic mode of the MIC (described further in the remainder of this chapter), along with the basic political differences between the two Ministers, it does not appear likely that they would elect continuity in policy on structural reform of the Inspectorate unless there were exogenous factors that existed independently across the two Administrations. This strongly suggests that variables external to the dynamics of the Labor Ministry itself were persisting over time for this Commission to have continued on its course of expansion across administrations.⁶⁸

⁶⁸ One Labor Inspector interviewed during research described at length how current Labor Minister, Gallardo, insisted on an approach of enforcement sympathetic to firms, in which no worker complaints should be prosecuted without first allowing management to defend its side, regardless of the situation or the evidence. In contrast, under Alfaro, he said that dealing with firm managers with a stronger hand was encouraged, and orders did not demand that inspectors give management the benefit of the doubt if sufficient evidence of a violation had already been obtained. In the opinion of this interviewee, the currently prevailing orders make it difficult for Inspectors to maintain legitimacy with workers (Interview with Jaime Díaz, January 31 2006).

Because César Gatica was first appointed to his special position in 2002, some might not see this story of institutional change as resulting from the same chronological pattern of civil society impetus as the Choi/Cima case. However, it is similar enough to merit consideration, even if the reform was more gradual and bears less striking timing than the unionization case. First, the only reason that Gatica received his special assignment was because the Choi/Cima case was boiling over, with the initial violence of the case immediately branding it abroad as yet another illustration of a general state of lawlessness and oppression in Guatemala. Second, the same aggravated international pressure for change in Choi/Cima that resulted precisely because of CAFTA's creation of higher stakes for and greater attention upon the entire Guatemalan government undoubtedly also had the specific effect of pushing the Labor Ministry to use whatever tools it had at hand to alleviate these criticisms. After all, these were criticisms that went straight from the U.S. to very high authorities – the Guatemalan President and members of its Congress. In the end, one could consider it possible that the Labor Ministry might have followed up on Gatica's success in subsequent years without CAFTA as a political catalyst, but the fact pattern of the decisions bears many marks of a CAFTA influence: first, regarding the timing of the expansions; next, the fact that the reform was exclusive to the maquiladora sector, the most controversial sector within the CAFTA debate;⁶⁹ and third, a phenomenon that will be discussed further below, that the inspectors themselves perceived their collective role as a special group to draw much of its legitimacy from the CAFTA.

⁶⁹ Those who say that the maquiladora sector would have been the most controversial in a non-CAFTA setting should consider that the banana and coffee sectors have in recent times both been the subjects of their own controversies, but did not receive the same emphasis in the CAFTA context as the garment-exporting manufacturers. One need only return to the argument of Rep. Sander Levin to see that this sector's dynamism alone made it more prominent in the eyes of foreign observers; perhaps also relevant was the simple fact that it was the only type of manufacturing that had penetrated deeply into Guatemala and much of the rest of Central America, with greater implications than primary product sectors for the supply chain decisions of American firms, garment buyers and textile producers alike.

Not only does this group appear to be a spillover from other circumstances and institutional changes; the MIC is working to bring about institutional spillovers of its own, regarding unions, NGOs, the business sector, and the Ministry itself. The solidification of this group's identity and its agenda for change is still in progress, and as such, does not have many "outcomes" whose implications are yet easily understood. Nevertheless, the MIC's ongoing work illustrates just how far-reaching the unwritten rule changes wrought at least in part by CAFTA can extend.

Since 2005, the Maquila Inspectors' Group has been engaged actively with VESTEX (the National Commission of Clothing and Textile Exporters), a sub-group of the National Non-Traditional Exporters' Association (AGEXPRONT)⁷⁰ and the business association for the maquiladora sector in Guatemala. Historically, VESTEX (like most of its membership) has not shown favor to organized unions, as its attempt to forestall the Choi/Cima unionization with a *solidarismo* alternative (Chapter 2) illustrates. Although like nearly all firm owners VESTEX publicly recognizes the right of workers to organize, its Labor Commission leader, Rolando Figueroa, promotes a pro-flexibilization agenda and is currently attempting to get a sliding scale productivity-based minimum wage passed through government. In short, VESTEX's general approach to labor is based on a different philosophical stream from the union model of negotiating universal standards of pay and compensation for workers.⁷¹

The substance of these interactions between VESTEX and the MIC so far has been to put the Inspectors more directly in touch with maquiladora owners, training them in Guatemalan labor law and remediation skills so as to improve their ability to properly implement the requirements of the labor code and to facilitate a smooth conciliation process. After a year of

⁷⁰ Define AGEXPRONT, cite its commissions

⁷¹ (VESTEX 2005, Interview with Rolando Figueroa January 21 2006)

satisfaction with this voluntary program, VESTEX has agreed to facilitate the Inspectors' implementation of tripartite labor law trainings with factory managers and workers,. Although VESTEX cannot force its members to attend these trainings, the approval from this organization is a major step in legitimating such activity in the eyes of firm owners. When the MIC came up in interviews with VESTEX employees, high praise came forth. Long-time employees of the business group gave the Inspectors credit for adding consistency and predictability to labor regulation in the sector, and particularly noted that the continuity of an Inspector (or group of Inspectors) across the lifetime of a case contributed to better outcomes for labor and management alike.⁷²

Aside from bringing management together at the table with labor before the emergence of any actual conflict, the MIC has already for over a year now been helping to organize monthly meetings between their own members, members of other branches of the Ministry of Labor, and representatives from VESTEX as well as non-governmental organizations such as the Center for Legal Action in Human Rights (CALDH) in a series known as “multi-sector maquiladora meetings.”⁷³ More recently, the group has collectively submitted an “Operational Plan” to the Inspector General and Vice-Minister of Labor requesting, among other things, more physical resources for the Maquila Inspectors Commission (including vehicles and air and chemical testing equipment), as well as an increase in the training budget for the explicit purpose of training Inspectors to defend workers' rights to associate and bargain collectively. The

⁷² Interview with Karín de León Campo, January 21 2006. Also worth noting is that VESTEX first came to partner with the MIC when Rolando Figueroa and César Gatica met while serving as representatives on the National Tripartite Minimum Wage Commission (Interview with César Gatica, January 31, 2006)

⁷³ Interviews with César Gatica, Jaime Díaz, January 17 and 31, 2006

justification given in the plan proposal for this specific investment was an increased need to support labor in the wake of CAFTA and its imperatives.⁷⁴

⁷⁴ Interviews with César Gatica, January 13 and 31 2006

Conclusion

The argument of this thesis, in brief, has been as follows: that the most familiar discourses on free trade agreements, in focusing on the effects of the formal rules of the free trade agreements themselves, do not take into account the full impact of these treaties on workers. Outside of the formal agreements, or perhaps more accurately, in their interstices, there are processes of institutional reform that a free trade agreement can motivate by providing a window of opportunity in which interest groups and institutions have an altered array of incentives and points of leverage for change. How these possibilities for change are altered depends on the institutions or interest groups in question: in the circumstances in Guatemala described in Chapters 2 and 3, we see a case where members within the government, to satisfy the demands of the larger, human rights-conscious trading partner, made reforms to labor law just to establish the country's good standing to enter into a trade agreement.

In Chapter 2, a case of organizing upended tradition in a country and an industrial sector where repression and union failure had been the longstanding norm. Although this case was similar in almost every respect to another case that took place nearly at the same time, the former resulted in the establishment of a union with a collective bargain that persists to this day. The argument made in Chapter 2 is that the difference between the success and failure of these cases was the differential emphasis on the Guatemalan government – especially the Ministry of Labor – as negligent in its responsibilities to protect its workers. Had that path not been taken with Choishin/Cimatextiles, management might have extended its two years of stalling indefinitely, which was also the strategy of NB's management. This management strategy led to the closure of a firm in which the union initially enjoyed more robust workers support than in Choi/Cima.

Furthermore, had the Choi/Cima case not taken place in a CAFTA political climate, there is no certainty that the Guatemalan Ministers of Labor and Economy would have acted in the decisive and coordinated fashion that they did, working together and closing the firm until it agreed to negotiate a collective pact with workers. This act on the part of these two Ministries was unprecedented, which strongly indicates that CAFTA was the independent variable driving this difference.

Within this case comparison, then, the lessons are twofold: first, that government labor law enforcers have powers of a special kind, powers either not held or even less readily exercised by the international buyers who are so often cited as the primary drivers of firm behavior (Gereffi 1999). These powers held by the state are often left unused because of the state's fear of scaring away investment; however, in Chapter 2's case comparison, we see that in the example where the state "revealed itself," investors remained, whereas a passive state in the case of NB resulted in firm failure and disinvestment. This difference is revealing, and suggests that policymakers have more room than they realize to structure the regulation of foreign investment.

The second lesson is that while civil society actors such as unions and NGOs working in cross-national coalitions may effectively generate gains for workers in developing countries, even they may not fully realize or capitalize on what it is about their strategies that make them effective. Insofar as the Guatemalan Ministry of Labor turned out to be the key actor in bringing about a positive resolution in the Choi/Cima case, both the participating civil society groups and other observers may want to consider further how these coalitions can interact more effectively with government agencies that under most circumstances are written off as ineffectual by outsiders.

Regarding this latter point of reconsidering the abilities of stereotypically “weak” developing-country bureaucracies, Chapter 3 illustrates how even minor changes in the rules governing these bureaucracies’ agents can generate significantly different results. In essence, sometimes it is not so much the players, but the rules of the game that are leading to disappointing outcomes. That the Guatemalan Inspectorate all along contained members who were willing and able to devise their own solutions to previously insoluble problems and disseminate their knowledge in new and creative ways suggests that there are resources in the Guatemalan Ministry of Labor still waiting to be tapped. Certainly, further analysis of these stereotypically weak bureaucracies is a desirable avenue for future research into opportunities for making labor law enforcement complementary to foreign investment and industrial upgrading.

Regarding indications for future research, there is obviously a broad field of possible future case studies to be made in Guatemala and elsewhere that can help to build more knowledge on the “high-road” labor agenda mentioned above. More immediately, the actors described in this research itself reveal plenty of room for further study: any investigations into buyer behavior in the NB case, as well as the specific trajectories and incentives of Guatemalan bureaucrats such as the Ministers of Labor, of the Economy, and the Inspectors General could all be very helpful in adding important shades of detail that remain missing from this thesis.

The metaphor of “invisible ink” used throughout this thesis may appear to only describe the distance between the sterile and ambiguous words of a rule and its actual living implementation – hardly an earth-shattering observation if left at this level. Nevertheless, the metaphor is useful if it brings closer attention to how the cases described herein indicate what decisions, actions, and combinations of interest come into play to bend the interpretations and re-workings of these rules in one direction and not another. If nothing else, these cases show that

the opportunities for free trade as a labor-friendly agenda exist far beyond the official terms of free trade treaties themselves, revealing them to extend into the realm of forcing change as a prerequisite for entry and/or participation. In the Introduction, these same dynamics were shown to play out for years after an initial agreement in Cambodia, and to be affecting the meaning of CAFTA in Guatemala on through the present day. In this sense, there is always an opportunity for change, so long as the proper actors can be convinced (or forced) to try alternatives during the continual process of implementing the rules of the game. The key lies in understanding the sources of opportunity.

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